

## **EXHIBIT 9**

1 you, the evidence will show that the final version of the  
2 Blaze license agreement from December 2006 gave the client,  
3 Federal, and all of affiliates, the right to use Blaze with  
4 no limitations.

5 So how does the Chubb & Son division factor into  
6 this? You heard about the Chubb & Son division. This is  
7 Pamela Lopata. She is an attorney who has worked at Chubb  
8 since before the ACE acquisition. And she will explain that  
9 that Chubb & Son division was not a standalone company. It  
10 did not have its own employees. It was simply the  
11 contracting arm for Federal. It was a division within  
12 Federal that signed contracts for Federal and issued  
13 payments for Federal.

14 And Ms. Lopata will explain that before the ACE  
15 acquisition, it was Federal's regular practice to have the  
16 Chubb & Son division sign its contracts. And she'll explain  
17 that Federal's vendors, they liked that practice, because  
18 most of them knew and felt good about the Chubb name. No  
19 one had ever heard of Federal.

20 And like I said earlier, the evidence will show  
21 that pretty much everyone inside and outside the company,  
22 including FICO, referred to this whole group of insurance  
23 companies that you're seeing on the screen as the Chubb  
24 group of insurance companies. That's the green ring on the  
25 slide. That's why you are hearing me refer to Chubb.

1 So what happened after the ACE acquisition in  
2 2016? The acquiring company was called ACE Limited. You  
3 can see I replaced ACE on the outer ring of the slide. It's  
4 replacing the Chubb Corp. But ACE Limited understood that  
5 the name Chubb had a lot of name and brand recognition, so  
6 it quickly changed its name to Chubb Limited. So you now  
7 see Chubb Limited on the outer ring of the slide. And  
8 Federal and ACE American, the two defendants in this case,  
9 my two clients, were now both part of the Chubb Group of  
10 Insurance Companies.

11 Now, as soon as this acquisition was announced,  
12 FICO started talking about, what's this going to mean for  
13 our business? And this is where I want to introduce you to  
14 some of the key players at FICO.

15 You're going to hear a lot during this trial about  
16 Russ Schreiber and Mike Sawyer. They were in FICO's sales  
17 department, and they were the employees responsible for the  
18 Chubb relationship. You won't get to meet them in person,  
19 but you will see them on video presenting testimony.

20 You will learn that Mr. Schreiber helped negotiate  
21 the contract in 2006. And Mr. Sawyer is what's called a  
22 client partner, which means he was Chubb's main point of  
23 contact at FICO. And the evidence will show that Mr. Sawyer  
24 and Mr. Schreiber started talking about the ACE acquisition  
25 right after it was announced in July 2015, and you will see

1 that they were worried about the ACE acquisition because ACE  
2 was buying Chubb and ACE was also a FICO customer, but ACE  
3 was a much smaller FICO customer. So FICO was concerned  
4 that if ACE were in charge, those millions of dollars in  
5 maintenance fees that Chubb paid every year might be coming  
6 to an end.

7 And so the evidence will show that Mr. Sawyer and  
8 Mr. Schreiber started a process of trying to figure out, how  
9 can we get more money before that transition happens? And  
10 they recruited a lawyer to help them, Mr. Tom Carretta. You  
11 will hear from him at trial. And the evidence will show  
12 that Mr. Carretta is one of the top lawyers at FICO, but he  
13 had nothing to do with negotiating the 2006 license  
14 agreement. In fact, the evidence will show that he had  
15 nothing to do with communicating with Chubb at all until  
16 Mr. Sawyer and Mr. Schreiber gave him a call when they heard  
17 about the ACE acquisition.

18 So now I want to talk about these two breach  
19 arguments that FICO came up with. And the first is this  
20 idea that Section 3.1 of the contract was breached. FICO  
21 says that because the 2006 license agreement was signed by  
22 the Chubb & Son Division of Federal Insurance Company, every  
23 time Chubb Canada, Chubb Europe or Chubb Australia used  
24 software that included Blaze, there was a breach of  
25 contract. That's the theory. That is FICO's argument

1 today. But the evidence will show that when FICO sold  
2 Federal the software license in 2006 and throughout that  
3 whole decade that followed, FICO knew that it was granting  
4 Federal and all of its global affiliates, including Canada,  
5 Australia and Europe, the right to use the Blaze license.

6 You're going to hear from a former Chubb employee  
7 who negotiated the 2006 license agreement, Mr. Phil Folz.  
8 Mr. Folz is retired now, but he'll explain that he  
9 negotiated that \$1.3 million license fee knowing and  
10 intending that it would allow all the global companies in  
11 the Chubb Group to use Blaze.

12 As I told you earlier, during trial you're going  
13 to get to see e-mails and communications at FICO from before  
14 this litigation started, so you don't have to rely just on  
15 what witnesses are telling you in the courtroom or on video  
16 after the litigation began. When you pay those attention,  
17 as I know you will, you will see that in a lot of places,  
18 what FICO is telling you now does not match what it was  
19 saying back then. FICO is telling you now that Blaze could  
20 not be used by Chubb Canada, Chubb Australia or Chubb  
21 Europe, but you will see documents that tell you what FICO  
22 was saying then. Back then, before this dispute, before  
23 this litigation, FICO acknowledged that it sold Chubb a  
24 global license that included all global affiliates in  
25 Canada, Europe and Australia.

1 Here's another example of this then/now phenomena.  
 2 The evidence will show that FICO came up with that  
 3 \$1.3 million license fee that Federal paid by looking at all  
 4 of Chubb Corporation's revenue, not just Chubb & Son's. The  
 5 evidence will show that when the folks at FICO sat down in  
 6 2006 to figure out how much are we going to charge for  
 7 Blaze, they looked at the total revenue earned by the entire  
 8 Chubb Group of Insurance Companies worldwide, \$12.3 billion  
 9 as the starting point for that license fee, all the global  
 10 entities in this navy blue frame on your screen. And yet,  
 11 even though back then, FICO charged and Chubb paid  
 12 \$1.3 million based on the revenue of all of its global  
 13 affiliates, FICO says, well, now those same global  
 14 affiliates' use of Blaze was a breach, and now we're  
 15 entitled to a second license fee.

16 Ladies and gentlemen, we are confident you will  
 17 reject this first breach claim as meritless.

18 Now, all the problems with FICO's claim that Chubb  
 19 Canada, Chubb Europe and Chubb Australia were not authorized  
 20 to use Blaze is why you also heard this other argument from  
 21 FICO about problems with consultants that use Blaze. They  
 22 needed a backup argument.

23 FICO now says that Chubb shouldn't have shared  
 24 Blaze with two consultants who worked at Chubb Canada and  
 25 Chubb Australia. On the screen is the IT director at Chubb

1 Australia, Russell Hodey, and he is coming to trial all the  
 2 way from Australia to address this. He will explain how  
 3 Chubb Australia hired a consultant called DWS to help  
 4 develop an application called "Evolution" that was going to  
 5 be used in Australia.

6 Chubb Canada was also using the Evolution  
 7 application, so Chubb Australia and DWS asked Chubb Canada  
 8 for some help. And in the course of that project, you'll  
 9 that an employee of AppCentrica, another consultant, gave  
 10 DWS a demonstration on how Blaze worked. The evidence will  
 11 show that Chubb Australia did not use Blaze in its Evolution  
 12 application because all of this was unfolding in 2016 right  
 13 as this litigation was starting, and Chubb was committed to  
 14 not expanding its use of Blaze.

15 That's it. That's all that happened. It would be  
 16 the kind of thing that no one would ever think twice about,  
 17 but because it happened at the same time that Mr. Sawyer,  
 18 Mr. Schreiber and Mr. Carretta were claiming Chubb was in  
 19 breach, it got folded into this lawsuit, and now we all have  
 20 to address it.

21 So now we're on the second breach argument you've  
 22 heard from FICO. They talked about this breach of Section  
 23 10.8, the assignment provision. Now, in the world of  
 24 contracts, a person or a company who holds rights under the  
 25 contract can transfer them. You can assign them to another

1 person.

2 So let's say that I go out and I rent an apartment  
 3 in Minneapolis for \$1,000 a month, and that lease gives me  
 4 the right to live in the apartment as long as I pay the  
 5 landlord \$1,000 a month. But then my job transfers me to  
 6 Chicago in the middle of the lease. So let's pretend that  
 7 my sister also lives in Minneapolis, and she happens to be  
 8 looking for an apartment with a \$1,000-a-month budget. I  
 9 might be able to assign, or transfer, the lease to my  
 10 sister, and it's like she's stepping into my shoes in the  
 11 contract, right? Now she has to pay the \$1,000 a month and  
 12 she gets to live in the apartment for whatever time is left  
 13 on the lease.

14 Because this concept of assignments is so common  
 15 in the world of business contracts, when FICO and Federal  
 16 sat down to negotiate their contract in 2006, they  
 17 negotiated assignment terms. And the evidence will show  
 18 that the parties agreed that there would be two very  
 19 different approaches to assignments.

20 First, Federal and FICO agreed in the first  
 21 sentence of Section 10.8 that run-of-the-mill assignments, a  
 22 situation where Federal just decided I'm going to paper  
 23 transfer my rights to someone else, just like I might want a  
 24 paper transfer my rights to my sister for my apartment, not  
 25 allowed. One of the executives at Chubb couldn't wake up

1 one morning and say, I'm done with Blaze; I'm going to  
 2 transfer the rights to my friend at MetLife. Couldn't do  
 3 that. Everyone agreed. That's the first sentence of  
 4 Section 10.8. And as FICO says, everyone agrees that type  
 5 of assignment didn't happen.

6 Now, FICO is hoping that you're going to see the  
 7 reference in the title of this section that says "No  
 8 assignment," and you're going to throw up your hands and  
 9 you're going to say, well, any and all assignments must have  
 10 been prohibited under this contract. But Federal and ACE  
 11 know that you're here and you were picked for this jury  
 12 because you said that you could be impartial and you would  
 13 give the parties their fair day in court. And that requires  
 14 hard work. It requires thinking very critically about what  
 15 the parties intended when they entered this contract. If  
 16 the no-assignment title on the contract was enough to  
 17 resolve this dispute, then we wouldn't need a trial where  
 18 you're asked to look at all available evidence to figure out  
 19 what the parties intended to agree to.

20 And the evidence will show that the second  
 21 sentence of Section 10.8 is very important. I'm going to  
 22 read it in its entirety because it's so important. It says,  
 23 "In the event of a change of control of client or if client  
 24 is merged with, acquired by, or inquires another entity or  
 25 undergoes a reorganization or otherwise acquires the right

1 to process the business of another entity, each such event  
2 shall be deemed to be an assignment, subject to this  
3 section, and client shall make no expanded use of the Fair  
4 Isaac products as a result of such assignment -- of such  
5 event unless and until Fair Isaac provides such written  
6 consent, which will not be unreasonably withheld."

7 So I want to break that down a little bit and  
8 start this process of the hard work. There was some  
9 reorganizing and some changes of control during all of these  
10 merger events, but I want to focus right now on the  
11 acquisition, that ACE acquisition, the main event, and  
12 here's how I want you to think about it.

13 When you look at Section 10.8, you need to  
14 substitute "Federal" for the first two times that "client"  
15 appears, because the evidence will show that Federal was the  
16 client who bought the Blaze license. Then you can simplify  
17 things. You can forget about all these references to events  
18 other than an acquisition, because we're focused on an  
19 acquisition right now. We're not worried about the merger  
20 the reorganization, the right to process new business. So  
21 I've removed them. I've simplified things with the green  
22 dots.

23 And then you can fill in, well, what happened  
24 here? We know that Federal was acquired by ACE Limited.  
25 And you heard, FICO agrees, that acquisition was a deemed

1 assignment. And the evidence will show it's an automatic  
2 assignment, not something you deem to paper. Who was the  
3 assignment to? Well, it was to the acquiring company, ACE  
4 Limited, which then became Chubb Limited because of the  
5 brand recognition. And once you do this, once you just  
6 substitute in the words to reflect what was happening during  
7 the acquisition event, what does the contract say?

8 Let's look at the first clause. It says that "If  
9 Federal is acquired by ACE Limited, the acquisition shall be  
10 deemed an assignment subject to this section." Easy enough.

11 So what is the rule? What is it subject to? It  
12 says, "ACE Limited," which then became Chubb Limited, "shall  
13 make no expanded use of the FICO products as a result of any  
14 such acquisition unless and until FICO provides such written  
15 consent which will not be unreasonably withheld."

16 So it requires some thought, no doubt about it.  
17 But when you dig in and fill in what actually happened here,  
18 it is clear what the parties intended. The evidence will  
19 show that the parties intended that if Federal were acquired  
20 by another company, rights under the contract are assigned  
21 to that new company. They're deemed assigned. In this  
22 case, to ACE Limited and then Chubb Limited. And Blaze use  
23 can continue so long as there is no expanded use. If use is  
24 going to expand because you're growing your use of Blaze  
25 through the acquisition, well, then you need to talk to FICO

1 and get some consent.

2 And you'll see that this makes perfect sense. Why  
3 should a merger or a reorganization or an acquisition  
4 entitle FICO to say, you have to stop using Blaze if the use  
5 of Blaze isn't expanding? The evidence will show that the  
6 parties agreed to a very specific expanded use rule. And  
7 the evidence will also show that FICO does not always agree  
8 to an expanded use rule, but it did so here, and with this  
9 lawsuit, with this Section 10.8 breach claim, it's going to  
10 ask you to rewrite the contract.

11 But every word in this contract matters. FICO is  
12 going to be asking you to delete this expanded use rule  
13 because the evidence will be that there was no expanded use  
14 of Blaze after the ACE acquisition. And FICO rushed to  
15 terminate the contract in March 2016 anyway, and that's  
16 really hard to justify.

17 This is a letter that Chubb sent FICO in  
18 February 2016 right after ACE acquired Chubb. Chubb  
19 explained, "The applications that have been utilizing the  
20 Blaze Advisor software since 2006 are currently running in  
21 the exact same fashion as prior to the merger transaction."

22 The evidence will show that this assurance was  
23 accurate. The 13 applications that were using Blaze after  
24 the acquisition were the applications that were using Blaze  
25 before the acquisition.

1 You heard a reference to 15 applications during  
2 FICO's presentation. You'll see some of that during trial,  
3 and it's because in these initial discussions, Chubb was  
4 erring on the side of caution in trying to name how many  
5 applications were using Blaze. And so there's some  
6 reference to 15, but the evidence will show it's only 13.

7 And you'll see that when FICO terminated the  
8 license agreement in March 2016, less than two months after  
9 this acquisition closed and despite a black-and-white  
10 assurance of no expanded use from Chubb, there was no  
11 evidence of expanded use.

12 Now, I'm sure FICO will have a theory during  
13 trial, maybe many theories, on how use of Blaze just must  
14 have expanded after the acquisition. You already heard  
15 today FICO talking about, well, some of the insurance  
16 policies had new writing company names on them. But the  
17 evidence will show that these are just things that FICO came  
18 up with during years of litigation once it had doubled down  
19 and had no choice but to try to come up with some  
20 justification for terminating the contract in 2016. You  
21 see, the evidence will show that FICO has known for years  
22 that it would have trouble trying to show the use of Blaze  
23 had expanded and that it a right to more fees just because  
24 there had been an acquisition.

25 This is an e-mail exchange between Mr. Sawyer and

1 Q. Well, let us start with the technical architecture.  
 2 What does that mean?  
 3 A. Technical architecture is I work with a team of  
 4 individuals that design the future state of our products, or  
 5 software products.  
 6 Q. And what does a solution architect mean?  
 7 A. A solution architect is I work with our customers to  
 8 identify their problems and look for solutions using zero or  
 9 more FICO technologies.  
 10 Q. Okay. And can you describe -- on the solution  
 11 architecture side, can you describe a little bit more on  
 12 that so we understand what it means to meet with a client,  
 13 look at a problem, find a solution?  
 14 A. Absolutely. As you can imagine, customers all over the  
 15 planet have varying degrees of problems that they're trying  
 16 to solve, and they typically look for technology solutions  
 17 to help them. So my role in that part of the organization  
 18 is to work with our customers, listen to what their problems  
 19 they're trying to solve, and help articulate a way to solve  
 20 those problems using technology that FICO would provide.  
 21 Q. What type of problems is it that a client has that wants  
 22 to look at FICO technology?  
 23 A. So typically they have efficiencies and business  
 24 problems they're trying to solve, where they would have  
 25 various connecting types of systems and they're looking for

1 ways to centralize those and bring business expertise out of  
 2 the -- out of their business users' heads and then put them  
 3 into technology and use them within their existing  
 4 infrastructures.  
 5 Q. I wish I had caught all of those words.  
 6 You mentioned using technology to bring together  
 7 all of their existing structures?  
 8 A. Correct.  
 9 Q. Could you describe for us what that means in more common  
 10 language?  
 11 A. Yes, of course. I will attempt.  
 12 So most organizations of any type will have years  
 13 of computer systems that are already in place that do very  
 14 specific things. And typically what they're trying to do is  
 15 bring those existing systems together to solve new types of  
 16 problems while not discarding those existing systems, right,  
 17 because they've been there for a while and they're useful.  
 18 Q. When you say "new types of problems," are you  
 19 referencing business problems?  
 20 A. Absolutely, yes.  
 21 Q. Let's be a little more specific and turn the  
 22 conversation to when customers are looking at Blaze Advisor  
 23 as a means to solve business problems. What's your  
 24 background with that?  
 25 A. Correct. So within Blaze Advisor space, I've been

1 working with Blaze Advisor now for 20 years for FICO. Blaze  
 2 Advisor is a business rule management system upon which  
 3 allows our customers to bring into technology their existing  
 4 know-how and knowledge across the organization and automate  
 5 that.  
 6 Typically, they're trying to look at solving  
 7 problems around first documenting and understanding what  
 8 those policy and rules are. The second is to be able to  
 9 automate those rules in the form of decisions, and then  
 10 typically there is some efficiencies around that of how they  
 11 bring things together for other purposes.  
 12 Q. Okay. The first part of your answer was bring their  
 13 know-how into technology?  
 14 A. Correct.  
 15 Q. Can you tell us what that means?  
 16 A. Absolutely. So all businesses are typically there to  
 17 support financial gains for companies. And in those  
 18 financial gains for companies, there are usually hundreds or  
 19 thousands of individuals across the organization that know  
 20 how to do the things day to day that requires that.  
 21 One of the challenges that you have is when people  
 22 manage that, it's typically inconsistent. You don't  
 23 necessarily know what decision you made and how that was  
 24 affected. And the problems that they are trying to solve  
 25 is, first, identify what all of those rules are across the

1 organization so they can see them, and then, second, is to  
 2 empower them to change and modify those in a more consistent  
 3 way.  
 4 Q. Is Blaze Advisor a solution to those problems?  
 5 A. Absolutely.  
 6 Q. So how?  
 7 A. So being a business rule management system, it provides  
 8 a framework of which they can articulate or write down those  
 9 concepts that are in their heads, policy manuals, curistics  
 10 that they are doing, you know, human-based logic on, and  
 11 codify them in some form.  
 12 Now, the business rule management system provides  
 13 various functionality to make that easier. For example,  
 14 metaphors is essentially a picture where you can represent  
 15 certain complex statements in a graphic. And it also puts  
 16 the structure in place that allows them to change and modify  
 17 and create whole new rules or policies without the  
 18 interaction of IT, and that's the information technology  
 19 team. That's a core group of programmers that would  
 20 typically do things.  
 21 Q. Okay. And you've used the title or name "business rules  
 22 management system." I take it that's an industry title for  
 23 this kind of software?  
 24 A. That is correct. That is an industry standard term for  
 25 that type of software.

1 Q. So as business rules and management -- and Blaze Advisor  
 2 is a business rules management system?  
 3 A. That's correct.  
 4 Q. And you mentioned, I think, if I heard you, two major  
 5 elements of a business rules management system or two major  
 6 elements of Blaze Advisor was, one, managing, and the other  
 7 automating?  
 8 A. Correct.  
 9 Q. Could we just talk about one at a time?  
 10 A. Absolutely. That would be the easiest way.  
 11 Q. So if you would tell us how Blaze Advisor is used to  
 12 manage the decisions or decision-making process of a  
 13 company.  
 14 A. Yes, absolutely. So if you look at how it helps to  
 15 manage the decisioning process, right? So we talk in terms  
 16 of rules and decisions, right? And if you look at what a  
 17 rule is, a rule is essentially an "if" statement, right? If  
 18 X, then Y. And those are typically difficult to understand  
 19 as things get more and more complicated.  
 20 Now, notice I haven't actually made a decision  
 21 yet. The decision that I make is at the point of  
 22 interaction with some sort of request, I need to make a  
 23 decision. So what is the output of multiple rules? That  
 24 would be the decision that I'd make.  
 25 The business rule management system provides a

1 framework of which nontechnical users can write and express  
 2 their logic in a standard format that can be readable and  
 3 usable and, thus, managed because there's a life cycle  
 4 associated with that". Who did what? Am I allowed to do  
 5 that?  
 6 Once I've made those changes, is that the change  
 7 that I expected it to do, right? I can test that change.  
 8 Did I break something? All of this is what's classified  
 9 rolled into the business rule management system.  
 10 And that's very separate from the business rule  
 11 engine side of it, which is the actual codification of that  
 12 logic. That codification is essentially, you know, the  
 13 English language to programming languages, right, that sort  
 14 of transformation to how that happens, and that's the actual  
 15 running of those rules. And, obviously, there's a lot of  
 16 technology that goes behind that as well.  
 17 Q. Does Blaze Advisor technology itself accomplish that  
 18 transformation between the rules that are being managed and  
 19 the engine that executes those rules to make a decision?  
 20 A. Yes, it does.  
 21 Q. How does it do that?  
 22 A. Through the relationships and how you store and manage  
 23 those rules, it actually interprets those rules and comes up  
 24 with the -- what we like to say, the path of least  
 25 resistance, to run those rules.

1 So one of the things that's interesting is humans  
 2 thing in a very interesting, you know, nonlinear fashion  
 3 most of the time, and the way they articulate their rules is  
 4 typically unorganized. So by being able to put an  
 5 organization to it, to allow them to think in their own  
 6 terms, the engine actually translates that into a set of  
 7 statements that can be run by other computer programs.  
 8 Q. And by the translation, is that a translation into the  
 9 software code that the computer can read and execute?  
 10 A. Yes.  
 11 Q. Before we go any further with this discussion, tell  
 12 us -- before we get to your specific experience with Chubb,  
 13 tell us what is your experience in the insurance industry  
 14 relative to Blaze Advisor and working with clients for  
 15 solutions?  
 16 A. Yes. So as stated earlier, I've been at FICO now for  
 17 20 years. I've worked in various capacities at FICO around  
 18 implementing problems, that is in a delivery aspect where I  
 19 actually work with the customers to build those solutions,  
 20 as well as a sales capacity from a technical sales  
 21 perspective. And that technical sales perspective is how  
 22 does the tool work? How does this happen, et cetera.  
 23 Now, through those various years I've been exposed  
 24 to several large insurance companies across the planet and  
 25 helped them understand how Blaze Advisor could help solve

1 their particular problems that they're looking for. And  
 2 each customer has various degrees of problems and different  
 3 problems they're trying to solve, and it's really a matter  
 4 of understanding what problem they're trying to solve which  
 5 requires an understanding cursory level of the industry and  
 6 how all that fits together, as well as what their existing  
 7 systems do, how they tie together, and how Blaze Advisor  
 8 would fit into that environment. Or not. Sometimes it  
 9 doesn't.  
 10 Q. And can you tell us some of the insurance company names  
 11 that you've worked with?  
 12 A. Sure. So Allied would be one. Mercury would be  
 13 another. RGA, USAA, Norwich Union out of the United  
 14 Kingdom, are some of the ones that come to mind.  
 15 Q. And we kind of got started right off with the -- right  
 16 into the meat of it, but let me back off a second and if you  
 17 would tell the jury what your educational background is  
 18 before you got to FICO with your history.  
 19 A. Sure. My educational background is I possess a bachelor  
 20 of science in management information system acquired through  
 21 Junior Commonwealth University.  
 22 THE COURT: Mr. Hinderaker, let me interrupt for a  
 23 second. Are you at a natural breaking point or close to  
 24 one?  
 25 MR. HINDERAKER: Sure. I can, Your Honor.



1 (Recess taken at 1:20 p.m.)  
 2 THE COURT: Here's what I'm going to do for now:  
 3 I'm going to -- there's a couple of other things I want to  
 4 look at before I tell you conclusively what my ruling will  
 5 be. So I'll let you know over the break in the afternoon,  
 6 and at that time, frankly, if Mr. Hinderaker, you're able to  
 7 say, you know what, we're not going to get to it today, more  
 8 time is better.

9 I will give you my -- a few preliminary thoughts.  
 10 If they come in, one thing I'm going to order is that the  
 11 quotations from clients be redacted out of the documents. I  
 12 don't think those are -- we don't have the foundation to  
 13 establish the statement out of court by the client that it's  
 14 a summary somehow of the business records, and it's pretty  
 15 straight-up hearsay.

16 If they come in or if some of them come in, then  
 17 they'd be redacted of those remarks, but the conclusions and  
 18 analysis of the consultant or the white paper may come in.  
 19 But I'm still going to look at that a little bit further.

20 On the documents that were produced by way of  
 21 supplementation six weeks ago, I'm inclined to exclude those  
 22 for a number of reasons. One, it's not the same kind of a  
 23 thing where you have an ongoing infringement and you have to  
 24 update and supplement all the way up to trial. These  
 25 documents were produced -- or written, copyrighted at least,

1 in 2021. It's 2023 that they were produced, or late 2022,  
 2 so not as timely as it could have been. And there's the  
 3 other issue of having been created post-discovery, I,  
 4 frankly, have some concern that they could be created for  
 5 the wrong reasons.

6 So those three I'm inclined to exclude. I'm going  
 7 to look carefully again at the consulting reports and the  
 8 white paper, and I'll give you, you know, a conclusive  
 9 ruling by the break or before we begin after the fact, okay?  
 10 All right.

11 MR. HINDERAKER: Your Honor, there is a witness  
 12 between Mr. Baseman and Mr. Baer.

13 THE COURT: Okay.

14 MR. HINDERAKER: So just in terms of the timing  
 15 considerations.

16 THE COURT: Well, that's helpful. Honestly,  
 17 I'll -- this is a big issue. It's an important issue. I  
 18 want to get it right. It's one that if we have the luxury  
 19 of time, and I can read more carefully and look more  
 20 carefully at the documents and the cases, I would prefer  
 21 that.

22 All right. Anything else before we bring in the  
 23 jury?

24 All right. Why don't you go ahead and get them.

25 **IN OPEN COURT**

1 THE COURT: All right. Mr. Hinderaker and  
 2 Mr. Baseman, come on back up.  
 3 And remember, Mr. Baseman, you're still under  
 4 oath, okay?

5 THE WITNESS: Yes, sir.

6 THE COURT: All right.

7 BY MR. HINDERAKER:

8 Q. Okay. Settled? All right. Welcome back.

9 A. Thank you.

10 Q. I'd like to kind of did as we said, kind of just jumped  
 11 in. I'd like to back up a little bit.

12 A. Of course.

13 Q. You told us that you were at FICO for the last 20 years.  
 14 I'd like the jury to understand what your experience was,  
 15 your professional experience was before FICO, if you could  
 16 give us that overview.

17 A. Yes, thank you. So prior to FICO, I was one of these  
 18 children that were gifted a computer when they were quite  
 19 young, and I started building gaming systems and  
 20 communication systems as a hobby and were selling these  
 21 things to other companies as a kid. And then that morphed  
 22 into -- at the time it was pre-sort of super Internet, but  
 23 building websites and things like that.

24 After that, it progressed into doing work for the  
 25 Department of Defense in essentially designing systems for

1 nuclear submarines and how they operated and take care of  
 2 the people in the field.

3 From that, it morphed into an integration  
 4 consulting job, where I would work with customers on how to  
 5 integrate complex systems in the computers, which then I  
 6 started working with FICO through -- through an acquisition  
 7 that FICO acquired one of the companies that I was working  
 8 for, which my world changed dramatically.

9 Q. What does it mean to integrate complex systems? I guess  
 10 I understand complex systems, but integrate into what?

11 A. Great, great, great question. So, you know, typical  
 12 computer systems are made up of hundreds, if not thousands,  
 13 of various other computer systems that do very specific  
 14 jobs. And a lot of times we would help customers figure out  
 15 how to bring data from one system in one format and present  
 16 it in another system in another format. And a lot of times  
 17 we would build applications from scratch on how to use that  
 18 data for particular things. Most of the work that I did in  
 19 that time was around marketing and how to target specific  
 20 individuals around activities.

21 Q. Was this your time at Braun Consulting?

22 A. Braun Consulting prior to that. And another company I  
 23 worked prior to that was a company called netNumina and  
 24 there we were working with a lot of pharmaceutical company  
 25 website launches, essentially what we were doing.

1 Q. Thank you. And then from Braun Consulting, your next  
2 stop was FICO?  
3 A. From Braun Consulting, yes. So Braun consulting was  
4 acquired by FICO and that's when I was interjected into the  
5 FICO system, yes.

6 Q. And that launch -- we started to talk about your  
7 experience in the insurance industry. And before we get to  
8 your experience with Chubb, I'd like to go back to that for  
9 a moment.

10 Can you -- so that we can understand that  
11 experience, can you give us an example of a solution that an  
12 insurance company wanted to solve, a problem --

13 A. Yes, I can.

14 Q. -- a problem that the insurance company wanted to solve  
15 in which you used Blaze Advisor as a solution?

16 A. Absolutely. So as I stated before, right, a lot of the  
17 job that I did -- well, the multiple jobs that I did within  
18 FICO were first in an implementation perspective, which is  
19 how do you actually develop the Blaze Advisor projects with  
20 the customers. But that morphed quite significantly as I  
21 gained more and more experience with the product and the  
22 company in the multiple industries that I worked with.

23 Now, you know, understand that in my role I  
24 crossed multiple industries. It all had very similar  
25 problems. Insurance in particular, a lot of the problems

1 that the customers -- insurance companies, large insurance  
2 companies or reinsurance companies, which are essentially  
3 companies that resell insurance products, is their number  
4 one primary objective that they typically would do is to  
5 provide more policies for individuals, right? To be able to  
6 provide insurance for a larger set of the population.

7 Q. And so that was a business challenge, a business problem  
8 that you had experience with?

9 A. That is correct.

10 Q. Did you use Blaze Advisor to solve that for the  
11 client or for the company?

12 A. Yes, we did.

13 Q. And tell us about that then, please.

14 A. Yes. So in these -- in these problem statements of how  
15 do I provide more insurance products for a larger group of  
16 customers, which most of the time are like you and me, they  
17 have to do various different steps along the way, right?  
18 They first have to evaluate who their customer is, right?  
19 And there's a lot of criteria that goes into understanding  
20 you as an individual, right? How old you are? Where do you  
21 live? Sort of those type of criterias, and in various  
22 countries and regions, there's various degrees of criteria  
23 that go into it. But in the United States, it's very  
24 specific about what they do.

25 But in order to do that, they also have to take

1 what sits in a lot of these large corporations, hundreds, if  
2 not thousands of business users, right? And what we  
3 classify as business users are the non-technical experts  
4 that understand the mechanics and the logic that goes behind  
5 what it would mean to approve insurance to somebody and what  
6 product fits their needs with respect to the risk implied  
7 for the insurance company associated with those products,  
8 right? So you kind of have to do a mix of who are you?  
9 What do you need? What do you look at? What do we have?  
10 Based on these mix of criterias, what's the best offer for  
11 you? What is the best that will actually serve your needs?

12 And in order to do that, this knowledge typically  
13 sits in people's heads, right? This knowledge sits in  
14 people's heads. It sits in policy books. Common, you know,  
15 experience, we can say.

16 But to expand that out, typically what you have to  
17 do is first identify what all of that logic is, right? And  
18 you have to identify what all of that logic is for various  
19 different reasons, right?

20 First is, is it ethical and legal of what our  
21 actual decision criteria is on this person? So in order to  
22 appreciate that, you have to actually document what that  
23 logic is. Well, that's one step. So once you document what  
24 that logic is and you actually configure what that logic is,  
25 you have the next problem.

1 Well, now if I'm going to expand to a water -- a  
2 wider group of an audience, I have to take more data from  
3 various different places and I have to bring that data in  
4 and evaluate that data, right? Because it's all computer  
5 systems behind the scenes. So you have to take that data,  
6 bring that data in a usable format and evaluate it in a  
7 consistent fashion, the outcome of what that actual decision  
8 is, and there's various steps in what that would look like.  
9 And Blaze Advisor would sit in that environment as -- we  
10 like to sort of refer to it as the brain, if you will, and  
11 the brain is, well, I know all of the stuff that's going on,  
12 but I have to put some rigor into the actual process because  
13 I'm making certain decisions in parallel, I'm going out and  
14 getting additional information, and I need to bring all of  
15 that into a consistent way and then make the right  
16 consistent decision for multiple parameters, right?

17 Because one policy says, I can give insurance to  
18 everybody. Well, unfortunately, that's not necessarily  
19 profitable all the time, right, so you have to be able to  
20 wait certain outcomes and risk appetite across the  
21 organization.

22 So Blaze Advisor first starts with documenting in  
23 a central place what all of that logic is. There's a lot of  
24 tools that we do in the management of that information,  
25 which I think we'll get to later, so I don't want to jump



1 too far in the mechanics of that, but the other thing that  
 2 it does is it actually provides the engine. So think of it  
 3 as the actual container of the software code that runs based  
 4 off of this human logic, because humans think in English,  
 5 for the most part. At least here in the United States, they  
 6 can think in pictures. They don't necessarily think in  
 7 programming language, so you have to kind of convert it to  
 8 that. And Blaze Advisor then takes this data, choreographs  
 9 all of this different data in the context of which decision  
 10 I'm making and makes a repeatable decision automated.

11 Q. And when you were working with that customer, client,  
 12 did the client experience the solution to the problem it was  
 13 trying to achieve?

14 A. Absolutely, yes. So there's multiple depths to the  
 15 problem that they're trying to achieve, right? So on one  
 16 hand, there's the, I would like to ensure -- I would like to  
 17 ensure more people, right, which is grow business,  
 18 essentially, right? They're all here for profit at the end  
 19 of the day. Well, there's multiple dimensions to the  
 20 profit. So not only do I need customers, but I also need to  
 21 make sure that that relationship is profitable within those  
 22 customers. So Blaze Advisor puts those constructs of what  
 23 the rules and the logic are to make those repeated decisions  
 24 transparent to the process.

25 Q. What's the value -- well, let me back up. I want to

1 come back to the transparency. But before doing that, what  
 2 are the components within Blaze Advisor that are  
 3 accomplishing what you just described regarding taking the  
 4 information of whatever number of business users, however  
 5 they're in heads or policy books or however spread, what's  
 6 the component or tool in Blaze Advisor that centralizes that  
 7 information?

8 A. So Blaze Advisor itself is a complicated set of software  
 9 components, right? You think of it as not a single entity  
 10 that does all things in a box, if you will. There starts  
 11 with at the core of the architecture or how the software  
 12 make-up of Blaze Advisor is something called a repository,  
 13 right? And essentially this repository is a structured way  
 14 upon which all of these rules, logic, business processes,  
 15 rule processes are stored.

16 From that repository, there are multiple ways upon  
 17 which both business users and technical users interface with  
 18 this logic. The first piece is through what is  
 19 affectionately known as an integrated development  
 20 environment, so think of that as your programmer interface,  
 21 right? Your programmer interface into Blaze Advisor is  
 22 where technologists do things like define data types, define  
 23 the framework upon which the data -- because you can't just  
 24 have random data pass into this. It has to be in a  
 25 well-formed structure. It has to match what you're

1 expecting it to be. In that there's some conversion from  
 2 technical terms to business terms, right?

3 So, for example, business users think of age,  
 4 right? Age is a pretty easy one to understand, but the data  
 5 elements that are associated with determining age can be  
 6 quite complex sometimes, especially as you go  
 7 internationally.

8 In that technical interface, you develop through  
 9 the generation from within the projects a, what we refer to  
 10 as a rule maintenance application, and the rule maintenance  
 11 application is a web-based front end that allows  
 12 non-technical users to interface with their logic. So  
 13 they're actually writing rules in English for the most part.  
 14 They're using pictures. Think most of us have probably seen  
 15 something like Excel, a table-type view, and there's other  
 16 graphical representations, which I'm sure you'll hear about  
 17 in other conversations. And that's delivered to the  
 18 business user. So the business user can now have a view  
 19 into the rules within guardrails of what the technical  
 20 infrastructure is in place to support that decision  
 21 attention. And they actually define their decisions.

22 So I want to make X, Y, Z decision based upon this  
 23 particular element, and they have very usable interface to  
 24 do things, right? And that's write rules, manage rules,  
 25 check things out, change them, make sure that I am approved

1 to do that. So we put life cycle in that component.  
 2 There's also tools around verifying those rules to make sure  
 3 that I wrote rules that didn't break the system, right?  
 4 Because humans don't necessarily think all the mitigating  
 5 factors that go into various data, what happens if data  
 6 doesn't exist? What happens with all of this? So you put  
 7 the rails in place to make sure that, and Blaze Advisor  
 8 automates all of that, so in this particular case, insurance  
 9 agents, don't have to think about the underlying technology  
 10 that happens. And that's presented in a web format that  
 11 they can log in, verify, test, and there is some visual  
 12 tools that allow them --

13 THE COURT: Excuse me. Mr. Baseman, just you have  
 14 a tendency sometimes once you get going to speak a little  
 15 bit too quickly. The court reporter has got to take it  
 16 down, so just slow down a little bit, okay?

17 THE WITNESS: All right. I will try.

18 THE COURT: Thank you.

19 THE WITNESS: I do tend to speak fast sometimes,  
 20 especially when I'm nervous. So, as you can imagine, this  
 21 is not pleasant.

22 So the other component that's related here is what  
 23 we refer to as the deployment component or the execution  
 24 component, right? And Blaze Advisor takes all of this  
 25 logic, wraps it up in a software bundle and then delivers it

1 that is thus evaluated the rules and uses existing data to  
2 augment that data process. And that's what the enterprise  
3 data on the right is, well, we also require data. Insurance  
4 companies have a lot of data on you. They have a lot of  
5 data on everyone. They have a lot of data if you're a past  
6 customer, a current customer, and other metrics that go into  
7 that.

8 So Blaze Advisor will take all of the data, all of  
9 the rules, work its magic, for lack of a better term, and  
10 then present that back and what the decision is.

11 Q. Without human intervention?

12 A. Sorry?

13 Q. Without human intervention?

14 A. Without human intervention, that's correct.

15 Q. And what's the speed of that process?

16 A. This process?

17 Q. Yes, what you just described.

18 A. Sub-milliseconds, typically. So, typically, this  
19 architecture is to describe what I mean by sub-milliseconds.  
20 It's very easy to think of it in a singularity of an event,  
21 like me as a consumer, right. I go to a web form. I fill  
22 out some data. I hit a button. Right. We get that aspect.  
23 You know, today we expect that come back in a less than a  
24 second. Right.

25 But if you think about a very complex -- complex

1 system or a complex set of systems, such as an insurance  
2 company, they're getting thousands if not millions of these  
3 over a rapid period of time. So when I say, it's done in  
4 sub-milliseconds time, which is less than a second, what I  
5 say is this architecture allows thousands and millions of  
6 records to be processed in less than a second, so you get a  
7 scaling advantage. Where humans would take a week to do  
8 one, now you can do thousands of them in a second.

9 Q. Have you had experience in applying the scaling  
10 advantage from Blaze Advisor, that is the ability to handle  
11 the greater volume in the insurance industry context?

12 A. Yes.

13 Q. And what has that been?

14 A. For example, in order to -- so let's take a very valid  
15 insurance example, right? So today we talk about an  
16 individual applying for a policy, and a business will have a  
17 goal of I would like to sell more policies, right? It's a  
18 rather simple metric. But behind insurance, there's  
19 resellers and partners and groups that are associated with  
20 all of this. And usually one of the litmus tests is in  
21 order to resell these policies and expand to a broader group  
22 of audience, they want to go to full population sets, right?  
23 They want to go from a few hundred people, a few hundred  
24 policies, to being resold across multiple different  
25 organizations that will go to tens of thousands, if not

1 millions of evaluations.

2 Q. As part of the agility discussion and the rules  
3 repository, is it fair to describe that as externalizing the  
4 rules?

5 A. You could certainly describe that as externalizing the  
6 rules. And where I would characterize that is externalizing  
7 the rules is today it sits, prior to Blaze Advisor, it sits  
8 in manuals and books and people's heads, right? So --

9 Q. Good. We've gone through that. And then is there a  
10 distinction between the rules and the rules repository of  
11 Blaze Advisor -- maybe this is what I'm asking -- a  
12 distinction between the rules in Blaze Advisor and writing  
13 those rules in the software applications themselves,  
14 so-called hard --

15 A. Oh, yes, yes, yes. Okay. So a lot of question comes  
16 up, well, that's great. So it's a decision process. I have  
17 existing systems today. Can I do the same thing in my  
18 existing applications today by just coding them directly in  
19 the application today?

20 Well, the answer is, to some degree, yes, right?  
21 But in reality, what that is is today those systems are --  
22 there's hundreds of them, especially in an insurance  
23 company. Some of them are 60 if not 70 year old technology,  
24 if you think of the old mainframes and cobalt applications  
25 sitting out there.

1 In order to do that, you would have to write that  
2 logic in multiple places and spend months, if not years, of  
3 doing integration into actually making it work within that,  
4 and then you would never get the flexibility because of the  
5 second you go write code directly into these systems, if you  
6 ever change that, you have to go back through the whole  
7 process again. And when we talk about the whole process  
8 again is software development is complex, right? We don't  
9 just write code and send it out, especially an insurance  
10 company or a bank, right?

11 So they will write the code. They will test it.  
12 They will validate it. They will move it to multiple  
13 environments. They'll check it. They'll performance test  
14 it. They'll do all this. So the impact is by centralizing  
15 that, you externalize all of the rules and logic in a  
16 central place, thus decoupling the actual implementation  
17 from the business logic because business logic changes all  
18 the time. Think of interest rates, right? Interest rates  
19 is a very important thing. They fluctuate daily. You can't  
20 go through this whole process daily to change these types of  
21 parameters.

22 Q. Does Blaze Advisor enable a customer to do that?

23 A. Yes, they do, in their own terms.

24 Q. In their own terms?

25 A. Yes.

1 Q. And is that through the rules repository?

2 A. That is through the rules repository and then the

3 management system that sits on top of that that allows them

4 to organize and categorize those rules as it's relevant to

5 them.

6 Q. Is it in the management system then that the rules are

7 also tested to see if they achieve the business outcomes

8 that are desired?

9 A. Yes. So through the business rule management side of

10 the equation is just writing a rule is -- that's -- you know

11 it's quite pedestrian in itself, right? It's the rules are

12 complex and humans when they write rules, most of the time

13 write bad rules. They think they're really good, but they

14 might not actually be good. So the management system,

15 through the whole architecture, allows them to test the

16 rule -- to first make sure that it works.

17 Q. We're talking about Blaze Advisor?

18 A. Yes, Blaze Advisor itself allows our business users to

19 test their rules. Does it work? Did it break? Did I get

20 errors? Right. Okay, it worked. Well, now I want to

21 validate my outcome. Just because I've created a rule, I

22 want to be able to take sample data and run it through, did

23 I get the result that I expected? So I think I automated

24 it. But if my automated is I want to bring on more

25 policies, I write rules, and the actual fact is in my rules,

1 I get less policies? Well, something is wrong. How do I go

2 and change that without going through the whole process

3 again.

4 Q. The whole process being the hard coding?

5 A. The hard coding and rewriting everything, et cetera,

6 yes.

7 Q. Can the business user, can a customer, can the client

8 validate the outcome before it's put into the --

9 A. So that is crucial to the process, right? So you're not

10 validating in a production sense. You're validating before

11 it even goes there. So you can make sure that your rules

12 are valid before go into existing systems, and Blaze Advisor

13 offers visual representations on how this looks and pretty

14 pictures and charts and graphs that sort of you can look at

15 and validate what those look like.

16 Q. So when you're giving the example of a rule that results

17 in worst performance, that was not in a deployment context?

18 A. Correct. That's before you get to that point.

19 Q. That's in the validation process that Blaze Advisor

20 provides?

21 A. Yes.

22 Q. Let me change the topic a little bit and now have the

23 management side of -- the manager side of the Blaze Advisor

24 functionalities, and we're going to go to the automated

25 decision and functionality. In the context of a business

1 user's application, okay?

2 A. Okay.

3 Q. So Blaze Advisor is one component of the application?

4 A. Typically, yes.

5 Q. Typically. Does it matter to Blaze Advisor whether

6 there are a couple other components in the application or

7 whether there are hundreds of components or thousands of

8 other components in the application?

9 A. Not at all.

10 Q. Why not?

11 A. Because of the isolation from the underlying

12 implementation, it is completely agnostic, that means it

13 doesn't care, how many systems are providing the data, how

14 many places -- because it becomes a central location that

15 all things are brought through to it.

16 Q. And we're talking, when we say "it is a central

17 location" --

18 A. It is the decisioning component, yes.

19 Q. Of Blaze Advisor?

20 A. Of Blaze Advisor, yes.

21 Q. Is the central location?

22 A. Yes.

23 Q. And when all things are brought to it, that's all of the

24 other components of the application are brought to Blaze

25 Advisor?

1 A. Correct.

2 Q. And what does Blaze Advisor do now that all of these

3 other components are brought to it?

4 A. So without going into too much depth on the mechanics,

5 essentially it takes that data and evaluates that data in

6 multiple stages and based off of the evaluation of that

7 data, presents back the answer.

8 Q. And how are the other software components of the

9 application fired, used, triggered?

10 A. So in a large ecosystem that has multiple components,

11 there's a lot of various ways of data coming in from third

12 parties, there's a lot of systems that are supporting

13 certain things, there's a lot of human work flow

14 applications on how all this comes together.

15 So Blaze Advisor is the central point upon which

16 the next action is decided off of all of those components.

17 So Blaze Advisor would be the system that tells all the

18 other systems what to do based off of its decision.

19 Q. Okay. So is that your analogy to the central nervous

20 system?

21 A. That would be, yes.

22 Q. The commands to all the other systems are coming from

23 Blaze Advisor; is that right?

24 A. They are -- it is a bidirectional relationship, so other

25 systems are sending data into Blaze Advisor, and Blaze

1 difficult.

2 **Businesses don't think in coding language. They**  
 3 **think in business terms, right? They think in things such**  
 4 **as age, time of -- you know, how long has this customer**  
 5 **been? They're not thinking of variable 1, 2, 3 on data pay**  
 6 **load from system 4, right? So you want to be able to**  
 7 **translate that into the terminology that they're using. So**  
 8 **you provide an interface through pictures, because those are**  
 9 **more powerful than writing sometimes and to be able to have**  
 10 **them write in their own words and language what that actual**  
 11 **rule is.**

12 MR. HINDERAKER: Bill, would you put up number 2.

13 BY MR. HINDERAKER:

14 Q. This is an example of a simple rule set you were just  
 15 mentioning?

16 A. Correct.

17 Q. Correct? I guess my question simply is this: This is  
 18 the if/then statements that you and others have talked  
 19 about.

20 So my question is this: If these five rules, if  
 21 that was going to be translated into computer language, is  
 22 it that simple or is it different?

23 A. So these simple statements here, so let's take the first  
 24 one, for example, and then I'll spare you going into all of  
 25 them. But let's take the first one. "If at least two

1 children satisfy age is less than 8, then set discount to  
 2 .25."

3 In computer terms, this would be translated --  
 4 right here you have a very simple statement. There's three  
 5 criterias that are met and I have an outcome. Well, just  
 6 determining the three criteria, at least two children,  
 7 that's actually complicated. You actually have to look at  
 8 the customer, all of their relationships. You have to  
 9 iterate through multiple data sets. You have to run  
 10 counters. You have to go figure that out. The software has  
 11 to figure that out.

12 Well, satisfy, well, I used the word satisfy here  
 13 is because I might want to change that to something else  
 14 later. And, again, the construct behind that would be very  
 15 complicated. So if you were to look at this in computer  
 16 terms, it would be if customer dot children loop count  
 17 number greater than, equals, right, and then what is my  
 18 discount? Discount of what? And then you have the other  
 19 models and you have to go and traverse all of that. So it  
 20 puts it in easier form.

21 Q. And then Blaze Advisor does the rest of the work?

22 A. And Blaze Advisor does the rest of it. So Blaze Advisor  
 23 will actually produce that code under the covers, right?  
 24 That's what it does.

25 MR. HINDERAKER: Let's go back to slide 4, Bill.

1 BY MR. HINDERAKER:

2 Q. So the third bullet point, "because it is easier and  
 3 faster to develop decision-making applications, new  
 4 applications can be developed and changes to existing  
 5 applications can be made faster than was possible before  
 6 Blaze Advisor."

7 Can you explain that, please?

8 A. Yes, I can. So as we've said before, right, to do and  
 9 achieve changes or create new decisioning -- new decisions  
 10 that you want to make, you would have to go and develop to  
 11 these existing applications multiple things. By having the  
 12 framework in Blaze Advisor, you have one place to do it.  
 13 You have your language that you can do it, which is faster.  
 14 And then since you already have all the rails in place, you  
 15 can deploy new ones quicker without having to go through the  
 16 whole process.

17 And then the next bullet point beneath that sort  
 18 of highlights why you would be making those changes.  
 19 Regulatory changes, right. Where you live here in the  
 20 United States, insurance laws change quite frequently. The  
 21 date upon which they can make a decision is quite sensitive  
 22 at times.

23 COURT REPORTER: I need you to slow down, please.

24 THE WITNESS: Oh, sorry. Again, I speak too fast.

25 BY MR. HINDERAKER:

1 Q. The data, oh, in the insurance industry example?

2 A. So, for example, the reasons why you would make these  
 3 decisions are very -- are very complex, right? You have  
 4 regulatory changes, right? So laws change daily across  
 5 various states, across various regions, across various  
 6 counties. So you need to be able to change very quickly  
 7 what your interpretation of those regulations are.

8 Competition, competitors are constantly lowering  
 9 prices, lowering entry points, creating new product mixes.  
 10 So you would like to be able to respond to that faster, but  
 11 not only respond to that, but you can actually be a market  
 12 leader that you're now driving that because you're making  
 13 changes faster and trying new things out to see if it's  
 14 working and giving you the results that you want.

15 Q. How does Blaze Advisor make it possible to make those  
 16 changes faster?

17 A. Through the ecosystem of the rule authoring and the  
 18 whole environment that we've discussed with the rails.

19 Q. The next bullet point, enhances business agility because  
 20 the rule statements changes can be made quickly.

21 A. The business agility part comes in to once I have the  
 22 framework that I can do this in, I can create whole new  
 23 decision areas in seconds and be able to be agile, which is  
 24 quick, to all of these market-leading forces.

25 Q. Next bullet point, because the rule statements for

1 decision can be changed faster, new insurance products can  
2 be brought to market faster, each product being a unique set  
3 of rule statements.

4 Can you explain that, please?

5 **A. Yes. So typically in insurance products, there's not**  
6 **necessarily a hard, fast, you know -- it's not a Kleenex**  
7 **box, right, like you've got various different mixes of**  
8 **things.**

9 **So what the product actually is is the result of a**  
10 **combination of rules, right? So I can have different**  
11 **pricing metrics. I can have different population sets that**  
12 **I want to do. So by having the foundation of the data set,**  
13 **I can actually create whole new mixes of rules and**  
14 **combinations to create new products or new offerings based**  
15 **off of that.**

16 **Q. Next bullet point, makes faster more consistent business**  
17 **decisions for any number of rule statements at any level of**  
18 **complexity.**

19 I'd like to break that down a little bit. What do  
20 you mean by "makes faster decisions"?

21 **A. So they're faster because you've automated them. So**  
22 **remember we talked about, you know, humans interacting with**  
23 **it. You know, you typically would go from manual review 10**  
24 **or 20 to a day to fully automating hundreds if not thousands**  
25 **a day, right? So you're faster that way. And just from**

1 **making those decisions faster.**

2 **Q. What do you mean by more consistent?**

3 **A. By consistency is I'm making the exact same decision**  
4 **based off of that data that's repeatable and documented that**  
5 **I've not adding any interpretation to what those decisions**  
6 **are. It's fact. If it's this, then that. I have -- that's**  
7 **what I've done.**

8 **Q. Is there any subjectivity into a decision made by a**  
9 **Blaze Advisor?**

10 **A. Subjectivity?**

11 **Q. Subjectivity.**

12 **A. No, there's no subjectivity.**

13 **Q. Is there any biasing into a --**

14 **A. There is no biasing, no.**

15 **Q. Next one, rules statements and rule sets can be shared**  
16 **across many applications. Let's break that down into that**  
17 **part and then we'll go into without the need for IT**  
18 **resources?**

19 **A. Yeah. This is actually one of the ongoing value that**  
20 **our customers start to have by using Blaze Advisor.**  
21 **Typically, customers start with a singularity of a problem,**  
22 **right? I have one problem that I want to solve. And**  
23 **they'll go and they'll develop the applications around it,**  
24 **they'll make the decision points to do that.**

25 **Well, as they've started to do that, they've**

1 **realized, wait a minute, I've now collected all of these**  
2 **rules and decisions in one place. These are the same rules**  
3 **that I'm using over here in this line of business. Why**  
4 **would I want to go and recreate it over here? I can just**  
5 **use the exact same one. So it provides that ability as**  
6 **well.**

7 **Q. And it goes on to say, without the need for IT resources**  
8 **to write the rule statements into each application.**

9 **A. Because you've already done all the connective tissue to**  
10 **make it work.**

11 **Q. And if a business wants to use its IT resources it can,**  
12 **I suppose?**

13 **A. Yes, customers can choose to use IT resources,**  
14 **absolutely, yes.**

15 **Q. The next bullet point, elevates all decision-making to**  
16 **the level of the organization's top expert.**

17 Tell us about that.

18 **A. So in these complex organizations, you have specialists,**  
19 **right? And specialists will know rate tables. They'll know**  
20 **risk actuarial tables. They're very specific in what**  
21 **they're looking at. But the key decision maker isn't**  
22 **necessarily those individuals. They're the ones that are**  
23 **managing the portfolio, right? My ongoing profitability**  
24 **model. What does my product mix look like?**

25 **So by elevating all of these decisions in a**

1 **central place, the leaders, if you will, or the business**  
2 **owners from an organization, have visibility into the whole**  
3 **process where they never had before.**

4 **Q. And next bullet point, enforces consistency and**  
5 **compliance. Let's take consistency first.**

6 **A. Well, consistency, since I've now taken the logic out of**  
7 **manuals and human process and heuristics and gut feeling,**  
8 **and I've put them in a structured format, I know for a fact**  
9 **that I'm making the exact same decision off of the exact**  
10 **same data time and time again, right? So I have that**  
11 **repeatable fashion.**

12 **Now, that's very important in compliance because I**  
13 **have to, as an insurance company, I have to declare to the**  
14 **government and to the people that I'm not making decisions**  
15 **based off of biased data, right? So being able to provide**  
16 **proof to what that looks like.**

17 **Q. And I think the next bullet point, maybe I jumped ahead**  
18 **and touched on or we've covered. Agreed?**

19 **A. So objective decisions based on data, not subjective**  
20 **based on decisions. I think we've --**

21 **Q. We've got done. And let's go to the last one. Has**  
22 **greater control over the results from high-volume**  
23 **operational decisions. Let's break that down. What do you**  
24 **mean by greater control?**

25 **A. So greater control has different -- different**



1 dimensions, right. So let's back it up a little bit, and we  
 2 talk about high-volume applications. We used the  
 3 illustration before about a couple hundred to 500 to  
 4 thousands to maybe millions of decisions, right? So by  
 5 having the control of those aspects through Blaze Advisor, I  
 6 can actually introduce new concepts to subset of the  
 7 population that I'm working with, I can actually throttle  
 8 certain areas. I have the full control from a business  
 9 without actually having to change anything. And the beauty  
 10 is is Blaze Advisor doesn't care if it's 1,000 decisions  
 11 today and tomorrow is a million. It doesn't care, right?  
 12 So you have the centralized control of being able to do  
 13 that.

14 Q. And then it goes on, control over the results of  
 15 high-volume operational decisions. I think we understand  
 16 what high-volume is from your testimony. What do you mean  
 17 by operational decisions?

18 A. So operational decisions actually impact the tactical  
 19 decision that I'm actually making at that point in time,  
 20 right? So a business decision is I would like to originate  
 21 100 more applications a month, right? That's a  
 22 business-level decision.

23 The operational decision is within that context, I  
 24 know exactly what decision I've made within what I'm trying  
 25 to do so I can actually prove it down.

1 Q. And what's the technology that brings the rules of  
 2 decision to the point that where the decision is made and  
 3 something happens in the marketplace?

4 A. That's the flexibility that we talked about upfront.

5 Now, there's one angle here that's also off of the  
 6 ability to handle high-volume operational decisions and  
 7 there's a semicolon there that says "scale." The scale is  
 8 what's very important in these context, right? So as I  
 9 achieve my frontline business goal of originating more  
 10 customers, now I want to go after a bigger market, right?

11 So my scale changes. And then by centralized control that  
 12 I'm making consistently across, regardless of how many  
 13 providers are reselling my insurance packages, how many  
 14 customers are applying for that, the Blaze Advisor doesn't  
 15 care.

16 Q. It can scale?

17 A. It scales. Yes.

18 MR. HINDERAKER: We can take that down now.

19 BY MR. HINDERAKER:

20 Q. And let me turn now to your personal experience with  
 21 Chubb. Over the years, about how many meetings have you  
 22 had, whether in-person or Zoom or telephone?

23 A. So my interaction with Chubb was pre-Zoom, so we had a  
 24 lot of meetings in person and telephone. So I can recall  
 25 three or four meetings in person post the sale of Blaze

1 Advisor to Chubb and countless phone conversations along the  
 2 way.

3 Q. And in general, the purpose of those discussions --  
 4 well, first, who at Chubb were you speaking with?

5 A. So at various levels. So typically the conversations at  
 6 Chubb would be with architects, so people that were, you  
 7 know, in charge of the infrastructure systems. Some  
 8 business owner capacity that would represent the business,  
 9 and I'm a little fuzzy with names, so, you know, it's been a  
 10 long time.

11 Another set of conversations would be with Chubb  
 12 leadership around sort of the value of Blaze Advisor and  
 13 things that we're doing inside of their environment.

14 Q. So you've had -- you did, in fact, have conversations  
 15 with those three categories of people?

16 A. Yeah. And one more category I forgot, data analyst as  
 17 well. So think of the data scientist, if you will, the  
 18 people that are building algorithms to evaluate the  
 19 customer.

20 Q. Can you tell us the subject matter of these meetings in  
 21 general?

22 A. So the subject matter of most of the meetings were  
 23 around, we're using Blaze Advisor. We have new problem sets  
 24 that we're trying to solve. For example, one of the most  
 25 prevalent conversations that we've had is we have an

1 analytic model, so think of it as fancy math, right? Fancy  
 2 math to determine some aspect of their customer.

3 Well, in this process, they would develop these  
 4 analytic models over here with other data systems, but  
 5 taking that analytic data model and actually putting it in  
 6 this framework, this application that Blaze Advisor  
 7 provides, is complicated. So Blaze Advisor provides an  
 8 ability for them to ingest those models directly into this  
 9 overall process. So most of the conversations I had past  
 10 that was how Blaze Advisor and some of the remodel  
 11 translating techniques would support that.

12 There was also conversations around best practices  
 13 on growing Blaze Advisor within different problem sets and  
 14 the governance associated with that. So how do they  
 15 actually organize themselves around it, et cetera.

16 Q. Model translator, that's an add-on product to Blaze  
 17 Advisor?

18 A. Model translator is an add-on product to Blaze Advisor.

19 Q. So I guess I heard you say so far sometimes the  
 20 discussion was about additional possible FICO add-ons to  
 21 Blaze Advisor and other times how to better use or more  
 22 fully use Blaze Advisor?

23 A. That's correct.

24 Q. Okay. Did you gain an understanding of the extent to  
 25 which Blaze Advisor was integrated into their business at



1 Chubb?

2 **A. So in those conversations, it was apparent that Blaze**

3 **Advisor was central to all of their decision-making process**

4 **within the group that we were talking about. And the reason**

5 **why they were looking at leveraging that is because they**

6 **wanted to extend other groups' works into Blaze Advisor. So**

7 **it was pivotal to what they were doing.**

8 **Q. Let me focus you on some meetings in 2015, 2016.**

9 **A. Okay.**

10 **Q. So in all of your occasions of meeting with Chubb at**

11 **that time frame, were you the initiator to be involved in**

12 **the conversation or were you being invited?**

13 **A. No, I was always invited.**

14 **Q. They were interested in talking to you?**

15 **A. Yes.**

16 **Q. And you mentioned model translation, were they also**

17 **interested in other FICO products at that time as add-ons to**

18 **Blaze Advisor?**

19 **A. So they were interested in add-ons to Blaze Advisor not**

20 **just in model translator but the model governance solution**

21 **that we had, which is a how do I manage all of my different**

22 **models? Because think -- you know, these insurance**

23 **companies have thousands of these analytic models and, you**

24 **know, hundreds of people that need to manage it. And the**

25 **conversations were around how do we use model translator to**

1 **bring it into Blaze Advisor and what the best practices**

2 **of -- once it's in Blaze Advisor, how do we actually govern**

3 **that model and monitor the performance of that model over**

4 **time? And various times it would be roadmap conversations**

5 **as well. So what is FICO doing? How are you guys sort of**

6 **progressing products, things like that.**

7 **Q. They want to look forward to where FICO is going?**

8 **A. Absolutely.**

9 **Q. Were there any discussions that you were involved in**

10 **where the conversation was about FICO's cloud platform for**

11 **Blaze Advisor?**

12 **A. Yes.**

13 **Q. And what were they? And first give us a time frame, if**

14 **you would, if you can recall? I'm asking late 2015, early**

15 **2016?**

16 **A. Well, I think it would have been, it was definitely**

17 **cold, so it would have been, yeah, around 2016 in the cold.**

18 **Q. Okay.**

19 **A. And it was -- you know, they were beginning the thought**

20 **process around moving to cloud. Again, cloud technology was**

21 **very new at the time, so there was a lot of trepidation**

22 **around the cloud as a principle in itself. And then, you**

23 **know, what value would our cloud offering of Blaze Advisor**

24 **provide them in those situations.**

25 **Q. And we should now back up a little bit for all of us to**

1 understand what do you mean by "cloud" and, you know, what

2 is this?

3 **A. What's the easiest description of cloud? The easiest**

4 **description of cloud is traditionally large organizations**

5 **would manage all of their IT infrastructure, all the**

6 **thousands of computers that they run to be able to do**

7 **things. The cloud is a central provider through Internet**

8 **technology does all of that for them.**

9 **Q. Is it fair to say, in other words, in theory, all of the**

10 **IT staff of Chubb & Son becomes redundant because the IT is**

11 **put in the cloud and some other provider is doing that**

12 **work -- the work that was formerly done by in-house staff?**

13 **A. That is certainly one aspect. There certainly is a**

14 **redundancy of staff that occurs in that but really it allows**

15 **them to focus on more important strategic things and be more**

16 **transformative across the organization as opposed to just**

17 **keeping the lights on on old technology.**

18 **Q. So the cloud service provider is providing a lot of the**

19 **technology to keep the software running in the cloud?**

20 **A. Yes.**

21 **Q. But as -- as you said, those are just beginning**

22 **exploratory discussions at that point?**

23 **A. Yeah. So at that time it was the beginning of our cloud**

24 **offering, so these were partnership-based conversations**

25 **around here's where we're thinking of going, where are you**

1 **guys thinking of going? How does this sort of gel together?**

2 **Q. And today is that called the FICO platform, your cloud**

3 **offering?**

4 **A. That is called FICO platform, yes.**

5 **Q. When you were meeting with these folks, were there any**

6 **conversations that came up about the fact that ACE had or**

7 **will be acquiring the Chubb Corporation?**

8 **A. There were --**

9 MS. GODESKY: Your Honor, may we have a sidebar?

10 THE COURT: You may. Approach.

11 MS. GODESKY: Thank you.

12 THE COURT: Remind the members of the jury, while

13 we're doing this, feel freely to stand up, stretch your

14 legs.

15 (Sidebar discussion.)

16 MS. GODESKY: Your Honor, this goes to the Rule

17 408 issue that we've been discussing. We submitted a

18 supplemental submission on this yesterday, and we have an

19 excerpt that's quoted in our submission from Mr. Baseman's

20 deposition where when he was questioned about these early

21 2016 meetings, Ms. Kliebenstein, Mr. Hinderaker's partner,

22 asserted that Rule 408 privilege should apply to all of

23 these conversations that were happening in early 2016

24 because they were set up for the express purpose of

25 settlement negotiations. It is in black and white in the

1 to the meeting room where the sales gentleman commented to  
 2 our host at the time, pretty crazy times. You know, what do  
 3 you guys think is going to happen? And the question was --  
 4 the answer was something along the lines of don't really  
 5 know, we're continuing on with what we're doing. We'll see  
 6 what happens.  
 7 Q. Continue to talk, huh.  
 8 A. Sorry?  
 9 Q. And did you have continuing meetings about Blaze Advisor  
 10 and its use at the --  
 11 A. Oh, absolutely. And -- yes, uh-huh.  
 12 Q. So now if I could turn to slide 5, please.  
 13 BY MR. HINDERAKER:  
 14 Q. From your experience of working with companies in the  
 15 various industries but including the insurance industry, I'd  
 16 like you to -- what factors do you look at to assess the  
 17 value of Blaze Advisor to the organization?  
 18 A. Yes. Value is an interesting dimension, right? And  
 19 when you look at Blaze Advisor and what it does, you have to  
 20 look at several different factors. So, first, you have to  
 21 look at what it is Blaze Advisor is actually doing and where  
 22 it sits in the organization. So, for example, what types of  
 23 problems is it trying to solve, right? An example would be  
 24 Blaze Advisor used to determine the placement of trash cans  
 25 is probably not as valuable to a financial institution

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1 that's using it to originate customers.  
 2 Q. Sure.  
 3 A. Typically.  
 4 Q. Second bullet point, is Blaze Advisor used to make  
 5 decisions connected to revenue generating events, like  
 6 selling insurance?  
 7 Can you describe that any more fully?  
 8 A. So -- yeah. So when Blaze Advisor is used for -- well,  
 9 let me rephrase that. It's mostly used for decisions  
 10 connected to revenue events. It is pivotal in those  
 11 decision process.  
 12 Q. Why do you say that?  
 13 A. Because it is the one actually making the decisions.  
 14 Q. The number of decisions that are made with Blaze  
 15 Advisor. Any comment on that?  
 16 A. Yes. So when you look at articulating the value of  
 17 Blaze Advisor in these situations, it's a mix, right? So  
 18 what decision am I making? Where does it sit in the  
 19 organization? What type of decision am I making? Well, how  
 20 many decisions am I making? Because that affects the sort  
 21 of scale of the decisions with the context of the business  
 22 that's actually doing it.  
 23 Q. Now, you said that revenue-generating events are  
 24 pivotal, if the transactions are not revenue -generating  
 25 events, how are they related to generating -- are they at

1 all related to revenue generating --  
 2 A. They typically would be related at some point to revenue  
 3 generating event because they would be the supporting  
 4 decisions in an overall process.  
 5 Q. The next bullet point, the significance to the business  
 6 of the decisions, what do you mean by that?  
 7 A. Well, if Blaze Advisor is sitting in a position where  
 8 it's automating a hundred percent of its decisions and those  
 9 decisions are directly impacting the sale, the cost, the  
 10 onboarding of the customers and Blaze Advisor is pivotal in  
 11 that decision process.  
 12 Q. The next bullet point, have we covered that or is there  
 13 something more there? Business decisions that are core to  
 14 the business?  
 15 A. Yes. I mean, what this highlights is people don't use  
 16 Blaze Advisor for unimportant decisions. So there's a lot  
 17 of other ways to sort of skin the cat, if you will, right?  
 18 And you use Blaze Advisor in the management system that it  
 19 provides to enable those critical business decisions.  
 20 Q. The number of users authoring rules. What does that  
 21 mean and why do you measure value from it?  
 22 A. The value dimension for the number of users authoring  
 23 the rules is very significant, and it's significant because  
 24 whereas we talk about complex decisions and you're  
 25 automating those decisions where the -- let's just take an

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1 example where there's three ladies that are running this  
 2 particular business division, right? And there's only three  
 3 of them. Well, the value of all of the tools that are  
 4 provided for the three of them to make those better  
 5 decisions, it's still significant, but it's not necessarily  
 6 the same impactful if you have a large organization with 500  
 7 people making the decision because automating and providing  
 8 all of this tooling, the more users that interact with the  
 9 authoring capabilities, the more value it brings.  
 10 Q. And what's the meaning of the last bullet point, the  
 11 extent Blaze Advisor is integrated into other areas of the  
 12 business?  
 13 A. So this is around, you know, I take a central set of  
 14 rules or logic and I integrate it into the existing  
 15 technology and how many different places are those same  
 16 rules being used?  
 17 So you look at supporting events as well. So I  
 18 have this business decision is pivotal to this  
 19 revenue-generating arm. I'm using the same rule set that's  
 20 managed here, and I'm using it over here, so now I'm getting  
 21 economies of scale and I'm impacting the whole enterprise as  
 22 opposed to just a particular division.  
 23 Q. So is that to say that the impact of Blaze Advisor is  
 24 greater on an -- in a divisional context than it is on a  
 25 single named application context?

1 **A. Oh, yes. No, they would certainly require other**  
2 **software components.**  
3 **Q.** Okay. Blaze is also typically added to customers'  
4 already existing computer applications, right?  
5 **A. Yes.**  
6 **Q.** And large companies may sometimes have hundreds of  
7 different components working with Blaze in a single computer  
8 application?  
9 **A. Yes.**  
10 **Q.** So when Blaze is used in these applications at large  
11 companies like Chubb, Blaze is one component of a  
12 multi-faceted complex system?  
13 **A. Yes.**  
14 **Q.** We can agree that when FICO sells Blaze to a client like  
15 Chubb, Blaze itself does not contain the actual rules,  
16 right?  
17 **A. Correct.**  
18 **Q.** And the actual idea of all of the rules comes from  
19 humans?  
20 **A. Correct.**  
21 **Q.** And you testified during your direct examination that  
22 Blaze Advisor provides some value to insurance companies,  
23 right?  
24 **A. Yes.**  
25 **Q.** As a general matter, though, you agree that it would be

1 very difficult to try to measure the value that Blaze  
2 provides to a particular company?  
3 **A. Difficult, yes, but not unachievable.**  
4 **Q.** But you personally would not be capable of quantifying  
5 the value that Blaze provides to a customer?  
6 **A. Correct, in a monetary sense.**  
7 **Q.** So let's talk a little bit more about the world of  
8 insurance. I think you said during direct that you have a  
9 cursory understanding of insurance, right?  
10 **A. That is correct.**  
11 **Q.** That means fairly basic, right?  
12 **A. Agreed.**  
13 **Q.** You have never been an insurance agent or a broker?  
14 **A. No.**  
15 **Q.** You have never been an insurance underwriter?  
16 **A. No.**  
17 **Q.** You have never worked in the technology group of an  
18 insurance company?  
19 **A. Nope.**  
20 **Q.** And you've never worked in the claims side of an  
21 insurance company?  
22 **A. No.**  
23 **Q.** You've never held any position at an insurance company?  
24 **A. Nope. Only a customer.**  
25 **Q.** And you haven't conducted, as part of your work at FICO,

1 any survey of Chubb customers regarding why they purchase  
2 insurance from Chubb?  
3 **A. Repeat the question.**  
4 **Q.** As part of your work at FICO, you haven't ever set out  
5 to conduct a survey of Chubb customers to find out why  
6 they're purchasing insurance from Chubb?  
7 **A. I have not, no.**  
8 **Q.** You don't even know what the term gross written premium  
9 or GWP means, right?  
10 **A. I do not.**  
11 **Q.** You spoke during direct about some problem-solving  
12 exercises you did for some unnamed insurance companies at  
13 the beginning of your discussion with Mr. Hinderaker.  
14 Do you remember that?  
15 **A. Yes.**  
16 **Q.** That was not specific to Chubb. That was your general  
17 experience?  
18 **A. General experience, correct.**  
19 **Q.** And then you started talking about Chubb and you said it  
20 was apparent that Blaze was central to Chubb's systems,  
21 right?  
22 **A. Yes.**  
23 **Q.** You said it was pivotal?  
24 **A. Yes.**  
25 **Q.** Correct?

1 **A. Correct.**  
2 **Q.** But when it comes to the use of Blaze at Chubb, you are  
3 only vaguely familiar with how the software was used, right?  
4 **A. I was very familiar with how the software was used in**  
5 **the context of everything else that they were doing,**  
6 **correct. But to what actual decisions they were using it,**  
7 **no.**  
8 **Q.** Is it true that you were only vaguely familiar with how  
9 the software was used at Chubb?  
10 **A. Yes.**  
11 **Q.** All you knew was that Blaze may have been used in an  
12 underwriting and claim fraud application, but beyond that,  
13 you didn't have any intimate knowledge of how Chubb actually  
14 used Blaze, correct?  
15 **A. Yes.**  
16 **Q.** If we could put up the fourth slide that you used during  
17 your direct examination, Vanessa?  
18 MR. HINDERAKER: The one that's numbered 4.  
19 MS. GODESKY: Yes. Thank you.  
20 BY MS. GODESKY:  
21 **Q.** So this slide is titled "The Business Value of Blaze  
22 Advisor," right, Mr. Baseman?  
23 **A. Yes.**  
24 **Q.** And the first bullet says, Blaze reduces the time and  
25 costs to develop decision-making applications.

1 **A. Yes.**  
2 **Q.** And that's a general statement, right, Mr. Baseman? You  
3 have not done anything in the course of your work at FICO to  
4 specifically analyze the extent to which Blaze reduced time  
5 at Chubb?  
6 **A. Correct.**  
7 **Q.** And then your third bullet says, new applications can be  
8 developed and changes to existing applications can be made  
9 faster than was possible before Blaze, right?  
10 **A. Yes.**  
11 **Q.** But you haven't analyzed and you don't have any  
12 information from the course of your work at FICO that allows  
13 you to say whether it's true that new applications were  
14 developed faster at Chubb because of Blaze, correct?  
15 **A. Not so. So we do have customers that continue**  
16 **relationships with FICO, which they talk about how much**  
17 **value that they've received and we have those kind of**  
18 **conversations.**  
19 **Q.** But specifically at Chubb, you cannot identify a  
20 particular application that was developed faster at Chubb  
21 because of Blaze?  
22 **A. Only through heuristic conversations, yes.**  
23 **Q.** And you also can't measure or talk about how quickly  
24 Chubb was able to make changes to its internal computer  
25 applications because of Blaze. You haven't measured that,

1 right?  
2 **A. Of their existing ones?**  
3 **Q.** Correct.  
4 **A. Correct.**  
5 **Q.** Your fourth bullet says, each insurance policy requires  
6 a unique set of rule statements for deciding on whether to  
7 offer an applicant a policy and at what price, right?  
8 **A. Yes.**  
9 **Q.** But just to be clear, you have not studied the specific  
10 policies that Chubb offers and figured out exactly which  
11 rules were being run against which lines of business?  
12 **A. No.**  
13 **Q.** Your fifth bullet is Blaze enhances business agility  
14 because rule statement changes can be made quickly, correct?  
15 **A. Yes.**  
16 **Q.** But you didn't get any information in the course of your  
17 work at FICO in terms of how quickly Chubb was implementing  
18 rule changes, right?  
19 **A. Not necessarily, no. So in the -- can I elaborate?**  
20 **Q.** Not necessarily, no, is good for now. Thank you.  
21 And you also don't have any specific information  
22 on whether they actually did implement rule changes at  
23 various points in time, correct?  
24 **A. No. They certainly did make various rule changes, yes.**  
25 **Q.** Can you specifically identify rule changes that were

1 made and whether they were made faster at particular points  
2 in time because of Blaze?  
3 **A. Only heuristically, yes.**  
4 **Q.** Your sixth bullet talks about rule statements for  
5 decision can be changed faster, new insurance products can  
6 be brought to market faster, each product being a unique set  
7 of rule statements, right?  
8 **A. Correct.**  
9 **Q.** Can you specifically identify any insurance product that  
10 Chubb was able to bring to market faster because of Blaze?  
11 **A. No.**  
12 **Q.** And based on all of this, Mr. Baseman, you are not in a  
13 position to say whether Blaze had any specific impact at all  
14 on Chubb's revenue or profit, correct?  
15 **A. Mathematically, no.**  
16 **Q.** Okay. So I want to talk about briefly what goes into  
17 removing Blaze from a computer application. If a large  
18 company has integrated Blaze into multiple applications, it  
19 can be complex to remove the software, correct?  
20 **A. Potentially.**  
21 **Q.** And it could take days, months or even years to unravel  
22 from internal systems, correct?  
23 **A. To unravel -- potentially.**  
24 **Q.** And you're saying potential because there's no typical  
25 length of time. It's going to depend on the nature of the

1 company, right?  
2 **A. It would be dependent on the nature of how the**  
3 **integration was done, what their software development life**  
4 **cycles were, yes.**  
5 MS. GODESKY: I'm almost done, Your Honor, if I --  
6 THE COURT: That's fine.  
7 BY MS. GODESKY:  
8 **Q.** Now, the amount of time you spent working on Blaze has  
9 shifted over time, correct?  
10 **A. Yes.**  
11 **Q.** And it has declined in recent years, fair?  
12 **A. Yes.**  
13 **Q.** In 2016, you were spending about 80 percent of your time  
14 on Blaze, right?  
15 **A. 2016? Yes.**  
16 **Q.** By 2021, when you'd provided deposition testimony in  
17 this case, you were only spending about 10 percent of your  
18 time on Blaze?  
19 **A. Correct.**  
20 **Q.** And that's because there was the introduction of this  
21 new FICO product called Decision Modeler, the cloud-based  
22 product, right?  
23 **A. Partially, yes.**  
24 **Q.** And for the most part, Decision Modeler, the cloud-based  
25 product, and Blaze do the same things?

1 **A. There are similarities.**  
2 **Q.** And just so everyone understands, this is a little  
3 technical, right, but Blaze is an on-premises program,  
4 right? It's not in the cloud.  
5 **A. Correct.**  
6 **Q.** And today most FICO customers are embracing cloud-based  
7 technologies, right?  
8 **A. Most, yes.**  
9 **Q.** And since customers are focussed on the cloud-based  
10 offerings, that's also where FICO has been focusing in  
11 recent years?  
12 **A. Yes.**  
13 **Q.** The percentage of FICO's software revenue that is  
14 attributable to Blaze has been decreasing in recent years,  
15 correct?  
16 **A. I'd say that's fair.**  
17 **Q.** And most of the company's decision management revenue  
18 now comes from that cloud-based FICO platform?  
19 **A. Yes.**  
20 **Q.** FICO still sells Blaze to some customers, but you've  
21 said that it's better suited for small companies and  
22 companies in places like Turkey and Latin America that are  
23 not yet incorporating the cloud, correct?  
24 **A. At that time, that was -- yes, that's what I said.**  
25 **Q.** Okay. And as of 2021, when you were deposed in this

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1 case, the number of Blaze customers was not increasing,  
2 correct?  
3 **A. At that time, correct.**  
4 **Q.** Okay.  
5 MS. GODESKY: Thank you. I have no further  
6 questions.  
7 THE COURT: All right. We'll take our afternoon  
8 break. We'll plan to be back in the courtroom at 25 minutes  
9 to 4:00, okay? Thank you.  
10 (Jury leaves courtroom.)  
11 (WITHOUT JURY PRESENT)  
12 THE COURT: Mr. Hinderaker, any update on sort of  
13 a time relative to Mr. Baer and some of the exhibits?  
14 MR. HINDERAKER: Your Honor, I think that -- I  
15 have a short redirect, but my best estimate is that -- I  
16 think Mr. Marce will be our last witness today, so we won't  
17 be getting to -- if we got to Mr. Baer, there would be ten  
18 minutes left in the day, that sort of thing.  
19 THE COURT: That's very helpful. Thank you. All  
20 right. We'll be in recess until -- yes, Mr. Godesky,  
21 Mr. Fleming?  
22 MR. FLEMING: We've submitted a letter response to  
23 FICO's arguments concerning the issues we discussed earlier  
24 today.  
25 THE COURT: Okay. I'll certainly look at that as

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1 well.  
2 MS. GODESKY: I just had a question. Does Your  
3 Honor have a rule with regard to speaking to witnesses when  
4 they're testifying? May we speak to witnesses when they're  
5 on direct but not on cross? Are there any guardrails that  
6 we both should be following?  
7 THE COURT: I think the rule, right, referencing  
8 the sequestration rule is once the witness is in the  
9 stand --  
10 MS. GODESKY: No discussion.  
11 THE COURT: -- no discussion.  
12 MS. GODESKY: Thank you.  
13 THE COURT: Thank you. We're in recess until 25  
14 minutes to 4:00.  
15 (Recess taken at 3:20 p.m.)  
16 IN OPEN COURT  
17 (Jury seated)  
18 THE COURT: Mr. Hinderaker, any redirect?  
19 MR. HINDERAKER: Yes, Your Honor.  
20 THE COURT: And Mr. Baseman, once again, remember  
21 you're under oath.  
22 THE WITNESS: Yes.  
23 MR. HINDERAKER: And remember to be slow in your  
24 speech.  
25 THE WITNESS: That I will try.

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1 **REDIRECT EXAMINATION**  
2 BY MR. HINDERAKER:  
3 **Q.** A few follow-up questions.  
4 **A. Yes, sir.**  
5 **Q.** Do you have any responsibility for the pricing of Blaze  
6 Advisor licenses?  
7 **A. No.**  
8 **Q.** Is that the responsibility primarily of Mr. Bill Waid?  
9 **A. Among others, yes.**  
10 **Q.** When you were asked the question about a customer with  
11 two applications considering -- having -- using Blaze  
12 Advisor for more applications --  
13 **A. Yes.**  
14 **Q.** -- and the wisdom of moving to an enterprise-based  
15 license --  
16 **A. Yes.**  
17 **Q.** -- were you assuming that -- did you give your answer in  
18 the -- under the assumption of an ongoing business  
19 relationship?  
20 **A. Yes.**  
21 **Q.** Have you ever had experience in setting Blaze Advisor  
22 pricing in the context where the relationship had ended and  
23 a transition license was being negotiated?  
24 **A. No.**  
25 MR. HINDERAKER: Could we put slide 4 back up? Is

1 that yours?

2 MS. GODESKY: It's Heather's.

3 BY MR. HINDERAKER:

4 Q. I'm sorry, on slide 4, do you have to be able to

5 monetize -- in your judgment, do you have to be able to

6 monetize the value of Blaze Advisor to know whether it's

7 valuable or not?

8 A. No.

9 Q. And in some answers to questions that you were asked,

10 you used -- used the phrase, heuristically or heuristic

11 conversations or only heuristically.

12 A. Yes.

13 Q. What did that mean?

14 A. Casual, inference-based, based off of the context of

15 what we were talking about. So you're able to deduce what

16 it was that they're talking about in the context of what

17 we're there to talk about.

18 Q. And what did you assume, understand, deduce, regarding

19 the value that Chubb was realizing from Blaze Advisor from

20 these conversations?

21 A. So how you're able to deduce that the Blaze Advisor

22 component is integral to the decision process is the

23 conversations that we were there to discuss around taking

24 pivotal analytic models and putting them into Blaze Advisor

25 was to get a wider use of those models across all of the

1 different systems they were using. They wouldn't have had

2 that conversation if it wasn't being used.

3 Q. A related question. Do you have to know that one thing

4 is -- do you have to know the extent that one thing is

5 faster than another to know that it's faster?

6 A. No.

7 Q. Does the fact that you were not measuring, quantifying,

8 the significance of Blaze Advisor, change your testimony

9 about slide 4 with respect to Blaze Advisor's value to the

10 business?

11 A. Not at all.

12 Q. And at the close, you were asked about information that

13 you gave in 2021 regarding Blaze Advisor sales. Do you have

14 any knowledge about the amount of success or lack of -- any

15 knowledge about Blaze Advisor sales today, the quantity, the

16 amount, the success?

17 A. Not from numbers but trajectory, yes.

18 Q. What's the trajectory?

19 A. The trajectory is it continues to sell and is, in fact,

20 picking up in Latin America and especially regions that we

21 do not have the cloud. So it is still a very viable product

22 of which customers still use.

23 MR. HINDERAKER: Thank you.

24 No further questions, Your Honor.

25 THE COURT: Thank you, Mr. Hinderaker.

1 Ms. Godesky, any re-cross?

2 MS. GODESKY: Nothing further, thank you.

3 THE COURT: All right. Thank you. Go ahead,

4 Mr. Baseman, you may step down.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: Mr. Hinderaker, or whomever, go ahead

7 and call your next witness.

8 MS. KLIEBENSTEIN: Thank you, Your Honor. We call

9 Mr. Jean-Luc Marce.

10 Your Honor, may I approach?

11 THE COURT: You may.

12 Come on up here, Mr. Marce. Good afternoon. If

13 you would raise your right hand, please.

14 **JEAN-LUC MARCE,**

15 duly sworn, was examined and testified as follows:

16

17 THE COURT: Go ahead and be seated. Make sure to

18 speak into the microphone and state your full name for the

19 record, please.

20 THE WITNESS: My name is Jean-Luc Marce,

21 M-A-R-C-E.

22 **DIRECT EXAMINATION**

23 BY MS. KLIEBENSTEIN:

24 Q. Mr. Marce, is the microphone at a comfortable spot for

25 you?

1 A. It is now.

2 Q. Thank you very much. And I have not met everyone yet.

3 My name is Heather Kliebenstein. I'm at Merchant & Gould as

4 well.

5 Mr. Marce, can you identify your current employer

6 and job title for us?

7 A. I'm a VP of software engineering at FICO.

8 Q. And how long have you worked at FICO?

9 A. Since 2002, so about 20 years.

10 Q. And today what are your primary job duties?

11 A. Today I lead a software development team responsible for

12 developing and mentoring and supporting decision technology

13 software at FICO. And I'm also leading architect for the

14 software products.

15 Q. And do you work with any particular software product

16 today at FICO?

17 A. I'm particularly focusing on Blaze Advisor.

18 Q. And can you tell the jury, in your words, what is Blaze

19 Advisor?

20 A. So Blaze Advisor is what we call a business rule

21 management system, which companies use to automate

22 decisions, automate processes and procedures they may have.

23 It helps them do that in a more efficient way and in a more

24 consistent way.

25 Q. For someone who doesn't work in IT and software



<p style="text-align: right;"><b>283</b></p> <p>1 the process. By having it in software, it allows</p> <p>2 organizations to change and adapt their business process</p> <p>3 depending on changing economic climates, new marketing</p> <p>4 opportunities or even in an interesting way you can do</p> <p>5 simulation. I can say what if I change the threshold FICO</p> <p>6 Score that we approve a loan for, and I can run that through</p> <p>7 the simulation and see what impact that would have on my</p> <p>8 portfolio.</p> <p>9 Q. Why is agility a benefit for customers using Blaze</p> <p>10 Advisor?</p> <p>11 A. So organizations that adopt a software process like</p> <p>12 this, again, it allows them to change and adapt. We live in</p> <p>13 a very fast-paced world with lots of opportunity out there;</p> <p>14 and so by moving process in a transparent way into software</p> <p>15 like this, it allows them to change their pricing model,</p> <p>16 make new offers, get into new markets, address a different</p> <p>17 need very quickly and easily.</p> <p>18 Q. Can you please turn to page 3 of this exhibit, Mr. Baer.</p> <p>19 A. Yep.</p> <p>20 Q. What is shown in the right-hand column at the bottom?</p> <p>21 A. That's a list of companies that have adopted Blaze</p> <p>22 Advisor.</p> <p>23 Q. And can you give us some examples?</p> <p>24 A. Sure. This list includes Toyota, United Health Care,</p> <p>25 Verizon Wireless, Wells Fargo and a number of others.</p>	<p style="text-align: right;"><b>285</b></p> <p>1 A. Yes.</p> <p>2 MR. ERBELE: Your Honor, I would move Exhibit 1172</p> <p>3 into evidence.</p> <p>4 THE COURT: Any objection?</p> <p>5 MR. FLEMING: No objection.</p> <p>6 THE COURT: 1172 is received.</p> <p>7 BY MR. ERBELE</p> <p>8 Q. Mr. Baer, who are executive briefs such as this one</p> <p>9 distributed to?</p> <p>10 A. Prospective customers, clients, existing customers,</p> <p>11 industry analysts, other people who might be interested in</p> <p>12 FICO's perspective.</p> <p>13 Q. So can you turn to the left-hand column of this</p> <p>14 executive brief. And you said this is an executive brief</p> <p>15 for underwriting; is that correct?</p> <p>16 A. That's correct.</p> <p>17 Q. And that's in the context of insurance, right, Mr. Baer?</p> <p>18 A. Correct.</p> <p>19 Q. So what's listed in the left-hand column of these</p> <p>20 executive brief?</p> <p>21 A. Yes, these are some of the benefits that underwriters</p> <p>22 can expect to attain by using the software.</p> <p>23 Q. And can you walk through those benefits, Mr. Baer?</p> <p>24 A. Reduced customer churn, improve business insight, speed</p> <p>25 up processing, give business users fine-grained control, and</p>
<p style="text-align: right;"><b>284</b></p> <p>1 Q. What are some other examples of FICO's clients using</p> <p>2 Blaze Advisor?</p> <p>3 A. Everyone from GEICO and Aviva. It runs the gamut.</p> <p>4 Q. In your conversations with those clients, have they have</p> <p>5 mentioned these benefits of Blaze Advisor?</p> <p>6 A. Yes. That's where these benefits directly come from,</p> <p>7 the conversations with the customer.</p> <p>8 Q. Let's look at a different type of marketing document,</p> <p>9 Mr. Baer. Can you please turn to Exhibit 1172 in your</p> <p>10 binder.</p> <p>11 Do you recognize this document?</p> <p>12 A. I do.</p> <p>13 Q. And what is it?</p> <p>14 A. It's what we call an executive brief. It describes font</p> <p>15 leadership and what FICO does in a broader context, in this</p> <p>16 case underwriting.</p> <p>17 Q. And who is responsible for creating this document,</p> <p>18 Mr. Baer?</p> <p>19 A. My team and I were responsible for creating documents</p> <p>20 like this.</p> <p>21 Q. And is it the regular practice of FICO's marketing</p> <p>22 department to create documents such as this?</p> <p>23 A. It is.</p> <p>24 Q. And what this document created and kept in the regular</p> <p>25 course of FICO's marketing department and its business?</p>	<p style="text-align: right;"><b>286</b></p> <p>1 choose optimal strategies.</p> <p>2 Q. And what is reducing customer churn? What does that</p> <p>3 mean?</p> <p>4 A. Reducing the number of customers who don't renew or</p> <p>5 don't continue on as customers.</p> <p>6 Q. And why is that a benefit?</p> <p>7 A. Well, the lower your churn, the happier customers, the</p> <p>8 more profitable those engagements are.</p> <p>9 Q. And turning to the third bullet, speeding up processing,</p> <p>10 why is that a benefit?</p> <p>11 A. Well, there are two benefits, one to the customer, and</p> <p>12 that is that they get a response to their request for a loan</p> <p>13 or a request for an insurance policy much more quickly, and</p> <p>14 I think that just delights the customer, but it also allows</p> <p>15 the organizations to scale beyond, you know, the limitations</p> <p>16 of humans to scale to address a larger volume of potential</p> <p>17 customers.</p> <p>18 Q. And would that be an example of the speed benefit we</p> <p>19 discussed earlier?</p> <p>20 A. Correct.</p> <p>21 Q. Looking at the next bullet, giving business users</p> <p>22 fine-grained control, why is that a benefit?</p> <p>23 A. So organizations that determine what these processes</p> <p>24 look like, they're very siloed and very structured, and</p> <p>25 they're usually run by a business manager who doesn't often,</p>

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1 without software like this, wouldn't often have insights  
 2 into the day-to-day process that somebody who might be  
 3 reviewing applications would be using. So the ability to  
 4 document and codify these business rules or business process  
 5 gives everybody access to the process, they get to see it,  
 6 they get to modify it, they get to vet it, determine if  
 7 that's within their business practice.  
 8 Q. That's an example of the control benefit we discussed  
 9 earlier?  
 10 A. Correct.  
 11 Q. Looking at the final bullet there, choosing the optimal  
 12 strategy by running "what if" analyses, what does that mean?  
 13 A. So one of the benefits distinctly in the software is  
 14 once I've identified all of this process, I can take that  
 15 process and change it, and I can change it in a sandbox, so  
 16 to speak, so it's not impacting direct customers, but I can  
 17 see what changes and modifications, maybe changes to the  
 18 analytics, changes to the data, changes to the offering  
 19 would have on my profitability. So I can run the process,  
 20 if you will, in silo, make those modifications and then  
 21 compare and contrast it to the process I'm currently using  
 22 and see if there's benefit to making those changes.  
 23 Q. So out of those list of benefits we discussed earlier,  
 24 what would that be an example of?  
 25 A. I can't remember the list. I think it was transparency.

1 empowers the decision-making process.  
 2 Q. And when you say "the software," Mr. Baer, what are you  
 3 referring to specifically?  
 4 A. The business rules management system.  
 5 Q. And is that Blaze Advisor?  
 6 A. Blaze Advisor.  
 7 Q. I think this document refers also to Decision Management  
 8 Suite; is that correct?  
 9 A. Yes. So Decision Management Suite is an evolution of  
 10 our software to move it to the cloud, so there's a product  
 11 within the Decision Management Suite referred to as decision  
 12 modeler, which is Blaze Advisor in the cloud.  
 13 Q. Okay. I would like you to turn to Exhibit 1174 in your  
 14 binder. Do you recognize this document, Mr. Baer?  
 15 A. I do.  
 16 Q. And what is it?  
 17 A. This is an internal sales enablement sheet. This is a  
 18 document that we produce for sales so that they understand  
 19 what they're selling and who they're selling it to.  
 20 Q. And is this document created and kept in the ordinary  
 21 course of FICO's marketing business?  
 22 A. Correct, it is.  
 23 Q. And is it FICO's regular practice to produce sales  
 24 sheets such as this?  
 25 A. Yes.

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1 Yes.  
 2 Q. Okay. Would you turn to the next page, Mr. Baer,  
 3 page 2? On the right-hand column in the lower right-hand  
 4 corner a list of bullets, what is shown there?  
 5 A. These are also improvements that underwriters should  
 6 expect to see by enabling this process.  
 7 Q. And can you walk through that list of bullets?  
 8 A. Better identify risk and improve strategies to prevent  
 9 losses, transition from static to dynamic, variable-based  
 10 pricing models, more finely and accurately segment  
 11 customers, and view policyholder relationships as a whole to  
 12 optimize treatments.  
 13 Q. And can you turn to page 3, Mr. Baer. Starting on the  
 14 second column at the bottom and on to the third column,  
 15 there's a list of bolded headings. What are those?  
 16 A. These are capabilities within the software.  
 17 Q. And can you walk through those capabilities?  
 18 A. Ingest, synthesize, sense and respond to data of any  
 19 size in real time.  
 20 Q. And so what does that mean in layman's terms?  
 21 A. That the software allows you to integrate data sets.  
 22 They could be, you know, what we call streaming, they happen  
 23 in real time, or they could be a big database that you  
 24 already have. And the ability of the software to ingest any  
 25 of that data, regardless of where it comes from, I think

1 MR. ERBELE: Your Honor, I would move Exhibit 1174  
 2 into evidence.  
 3 MR. FLEMING: No objection.  
 4 THE COURT: 1174 is received.  
 5 BY MR. ERBELE  
 6 Q. And so who receives this document, Mr. Baer?  
 7 A. Only sales. This is an internal sales document.  
 8 Q. So this is FICO's salespeople?  
 9 A. Correct.  
 10 Q. And at the top it says repeatable solution: Insurance  
 11 underwriting. So are these FICO's salespeople involved in  
 12 selling FICO products to the insurance industry?  
 13 A. That is correct.  
 14 Q. And which FICO products would be at issue here?  
 15 A. Any product that addresses some of the concerns that  
 16 insurers might have in underwriting, including Blaze  
 17 Advisor. It could include express optimization, as well as  
 18 analytic modeler or other products within the Decision  
 19 Management Suite.  
 20 Q. So looking at the right-hand column there entitled  
 21 Benefits, what is shown in that column?  
 22 A. These are benefits that insurers, that clients who use  
 23 the Decision Management Suite would -- could achieve based  
 24 on our customer feedback.  
 25 Q. And why is benefits included in the sales document?

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1 A. So that salespeople would understand the benefits of the  
 2 software that they're selling.  
 3 Q. And what benefits are listed here?  
 4 A. Increase the processing time on new insurance policies,  
 5 transition from a manual underwriting process, reduced  
 6 decisioning times, an increase in application volume  
 7 capacity, reduced processing times, double volume, reduced  
 8 costs, increased revenue, and lowered or combined ratio,  
 9 which is increased profitability.  
 10 Q. And how does FICO's marketing department know about  
 11 these benefits?  
 12 A. These all came directly from customers who use the  
 13 software.  
 14 Q. I would like you to turn to the third page, Mr. Baer.  
 15 Under Key Contacts for marketing, who is listed there?  
 16 A. I am.  
 17 Q. I'm going to change topics a bit and ask you about Blaze  
 18 Advisor's competitors. Does Blaze Advisor have competitors  
 19 in the marketplace for decision rules management system  
 20 software?  
 21 A. It does, yes.  
 22 Q. And were you responsible for marketing the benefits of  
 23 Blaze Advisor with respect to those competitors?  
 24 A. Yes. So, again, we go back to what our customers tell  
 25 us, the values that they achieved and they value the

1 A. So it communicates the value in ways that, you know, the  
 2 spoken word cannot. You know, when I talk about consumer  
 3 success stories, for instance, prospective customers want to  
 4 know that there are others who have used the software, use  
 5 the software for their particular use cases and achieved  
 6 some distinct and significant results. They're interested  
 7 not only in the way that these customers measured that  
 8 success, but also, you know, what their alternatives are.  
 9 So we publish a wide variety of documents, work with  
 10 industry analysts to also convey these stories and allow  
 11 them to try the software and, you know, justify and  
 12 legitimize the story that we have to tell.  
 13 Q. Thank you, Mr. Baer. I have no further questions.  
 14 THE COURT: Counsel, cross-examination.  
 15 CROSS-EXAMINATION  
 16 BY MR. FLEMING:  
 17 Q. Good morning, Mr. Baer.  
 18 A. Good morning.  
 19 Q. I'm Terry Fleming. Counsel for the defendants.  
 20 At the beginning of your testimony, I noticed that  
 21 you mentioned a few of the companies that you worked with  
 22 before. But you actually worked with nine other companies  
 23 before coming to FICO, right?  
 24 A. I think that's correct, yes.  
 25 Q. Okay. And all of those are exclusively in the marketing

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1 software for, and we focus on those values with regard to  
 2 our competitors.  
 3 Q. And what attributes differentiate Blaze Advisor from its  
 4 competitors?  
 5 A. It's all the ones we've just run through, control,  
 6 transparency, visibility, agility.  
 7 Q. What's FICO's understanding of its market positioning  
 8 with respect to its competitors?  
 9 A. So there isn't a single customer that exists today in  
 10 enterprise software, let alone FICO, but certainly for Blaze  
 11 Advisor, that doesn't do a competitive bake-off before they  
 12 buy the software, not a one. So every single one of our  
 13 customers has access to competitive software, and they test  
 14 us against IBM or Pegasystems or SAS or a number of vendors.  
 15 And so at the end of the day, they choose our software  
 16 because it gives them these values. So I can make an  
 17 assumption that the others don't, but we don't go into it  
 18 too deeply.  
 19 Q. So your understanding of your market position is based  
 20 on your customer feedback; is that correct?  
 21 A. That's correct.  
 22 Q. So we've looked at a lot of different marketing  
 23 documents for Blaze Advisor and talked about the process.  
 24 Why does FICO invest the time and resources in creating  
 25 these documents and marketing Blaze Advisor?

1 area?  
 2 A. Correct.  
 3 Q. And since you've been at FICO, you've just been working  
 4 in the marketing area, right?  
 5 A. That's correct.  
 6 Q. With a number of products under your purview, including  
 7 Blaze Advisor.  
 8 A. Correct.  
 9 Q. Okay. And in your role in marketing, you are marketing  
 10 Blaze to persuade customers to buy the product, right?  
 11 A. That is the role of marketing.  
 12 Q. Okay. And you're here today testifying to the jury  
 13 about what a great product Blaze is, right?  
 14 A. Yes.  
 15 Q. Okay. You're paid to say that Blaze is a good product,  
 16 right?  
 17 A. Yes.  
 18 Q. You're paid to say that Blaze is valuable to customers,  
 19 right?  
 20 A. Correct.  
 21 Q. All right. The marketing materials that your team  
 22 creates, the purpose is for your salespeople to sell FICO  
 23 products, right?  
 24 A. That is correct.  
 25 Q. You have interest in drumming up value to sell Blaze,

<p style="text-align: right;"><b>299</b></p> <p>1 A. I have no idea.</p> <p>2 Q. Okay. Let's look at Exhibit 1174. Now, I note the</p> <p>3 Target Audience for this solution are \$250 million insurance</p> <p>4 companies. That's FICO's sweet spot, correct? I'm looking</p> <p>5 at the top under Target Audience in the middle column.</p> <p>6 A. Yes, that's what it says.</p> <p>7 Q. So FICO -- so Chubb would not be part of that Target</p> <p>8 Audience?</p> <p>9 A. Well, so I imagine that this is -- was intended as the</p> <p>10 minimum size, not as a maximum size.</p> <p>11 Q. Okay. It doesn't say that, right?</p> <p>12 A. It does not say that.</p> <p>13 Q. Okay. All right. Now, let's look at the next page.</p> <p>14 Now, you've mentioned briefly the competitors, the companies</p> <p>15 that provide alternatives to Blaze software. Can you</p> <p>16 identify those? I don't think they're listed here.</p> <p>17 A. Well, so we do have some competitors listed here, but</p> <p>18 the ones that I normally run against are SAS, IBM,</p> <p>19 Pegasystems, Experian and Red Hat application.</p> <p>20 Q. Drools?</p> <p>21 A. Drools.</p> <p>22 Q. Now, have those been -- if you listed the same</p> <p>23 competitors from the 2016 time period, would you identify</p> <p>24 the same list?</p> <p>25 A. Probably, yes.</p>	<p style="text-align: right;"><b>301</b></p> <p>1 control, speed, accuracy, consistency, transparency,</p> <p>2 agility. Do you believe those benefits to be actually</p> <p>3 realized by FICO's clients?</p> <p>4 A. I do.</p> <p>5 Q. How do you know?</p> <p>6 A. Well, those came exclusively from conversations --</p> <p>7 MR. FLEMING: Objection, hearsay.</p> <p>8 THE COURT: Sustained.</p> <p>9 You can talk generally about your process, but not</p> <p>10 specific statements made by customers. Okay? You</p> <p>11 understand the line I'm drawing?</p> <p>12 MR. ERBELE: Yes.</p> <p>13 THE COURT: Okay.</p> <p>14 THE WITNESS: So those --</p> <p>15 THE COURT: You weren't necessarily over the line,</p> <p>16 but counsel makes an objection so that you don't go over it.</p> <p>17 THE WITNESS: Sure.</p> <p>18 THE COURT: Okay?</p> <p>19 THE WITNESS: So the process that we use to</p> <p>20 develop these value propositions are -- come directly from</p> <p>21 conversations that we have with our customers.</p> <p>22 BY MR. ERBELE</p> <p>23 Q. And Mr. Fleming brought up Southwest Airlines. What is</p> <p>24 your understanding of the use of Blaze Advisor there?</p> <p>25 A. It's been so long. I don't know that I could speak</p>
<p style="text-align: right;"><b>300</b></p> <p>1 Q. Okay. And are there some instances where a customer</p> <p>2 could change from using a software like Blaze to a</p> <p>3 competitor software and have no difference in the</p> <p>4 performance?</p> <p>5 A. I wouldn't be in a position to know that.</p> <p>6 Q. Okay. Let's see. And, finally, we're looking at the</p> <p>7 last page or the second page of this exhibit where you're</p> <p>8 looking at competition, strengths and weaknesses?</p> <p>9 A. Yes.</p> <p>10 Q. And I notice that you say FICO's biggest competitor is</p> <p>11 not these other companies, but internal builds. What do you</p> <p>12 mean by that?</p> <p>13 A. Well, one of the options that exists for customers is to</p> <p>14 either develop custom code or use an open source</p> <p>15 distribution of a business rules management system and build</p> <p>16 it themselves.</p> <p>17 Q. All right. Okay. I have no further questions. Thank</p> <p>18 you.</p> <p>19 THE COURT: Thank you, Mr. Fleming.</p> <p>20 Mr. Erbele, any redirect?</p> <p>21 MR. ERBELE: Yes, Your Honor. Briefly.</p> <p>22 REDIRECT EXAMINATION</p> <p>23 BY MR. ERBELE:</p> <p>24 Q. So you walked through a list of value propositions or</p> <p>25 benefits of Blaze Advisor. I believe you testified to</p>	<p style="text-align: right;"><b>302</b></p> <p>1 specifically to Southwest Airlines' use, but I do know that</p> <p>2 some of their recent challenges had nothing to do with their</p> <p>3 use of Blaze Advisor.</p> <p>4 Q. And what is that understanding?</p> <p>5 A. That they, you know, they were challenged with --</p> <p>6 MR. FLEMING: Objection, Your Honor. Hearsay.</p> <p>7 THE COURT: Sustain the objection as to</p> <p>8 foundation.</p> <p>9 Why don't you lay the foundation, Mr. Erbele?</p> <p>10 BY MR. ERBELE</p> <p>11 Q. Have you had conversations with anyone regarding the</p> <p>12 benefit -- or the issues with Southwest?</p> <p>13 A. A few weeks ago I did.</p> <p>14 Q. And who was that with?</p> <p>15 A. That was with a sales rep.</p> <p>16 Q. And based on that, what is your personal understanding</p> <p>17 of the involvement of Blaze Advisor?</p> <p>18 MR. FLEMING: Objection, hearsay.</p> <p>19 THE COURT: Sustained.</p> <p>20 BY MR. ERBELE</p> <p>21 Q. Mr. Fleming also asked about the versions of Blaze</p> <p>22 Advisor. He pointed out version 7.4 and asked if it was</p> <p>23 comparable to other versions. Do you know if the benefits</p> <p>24 of Blaze Advisor changed from version to version?</p> <p>25 A. They get further enhanced. It's not like there's a sea</p>

**303****305**

1 change to the capabilities of a product, but oftentimes  
 2 they'll add either new features or enhance the speed by  
 3 which the process works. That only enhanced the five or six  
 4 value propositions we've identified.  
 5 Q. So you've been at FICO since 2013; is that correct?  
 6 A. Correct.  
 7 Q. And Blaze Advisor has gone through several version  
 8 changes since you began at FICO; is that correct?  
 9 A. Correct.  
 10 Q. But are the benefits of control, speed, accuracy,  
 11 consistency, transparency and agility realized in all the  
 12 versions of Blaze Advisor?  
 13 A. They are, yes.  
 14 Q. Thank you, Mr. Baer. I have no further questions.  
 15 THE COURT: Mr. Fleming, any recross?  
 16 MR. FLEMING: Nothing further, Your Honor.  
 17 THE COURT: Thank you, Mr. Baer. You may step  
 18 down.  
 19 We are at 20 minutes after 10 and done with the  
 20 witness, so this would be a convenient time to take your  
 21 morning break.  
 22 Remember, members of the jury, no independent  
 23 research, no talking about the case. Okay?  
 24 We'll be back in here at 25 minutes to 11. Thank  
 25 you.

1 MR. HINDERAKER: Let's see if we can do without.  
 2 THE COURT: Okay.  
 3 MR. HINDERAKER: I don't like technology.  
 4 So you see that it begins on -- and I said, "Okay."  
 5 All right. So Chubb could have said no, we're terminating  
 6 the license, you know, we're moving on to ASIS systems in  
 7 the next six months, we don't need your license anymore. It  
 8 could have happened just like that, and that would have been  
 9 okay. But they had told us nothing, so we had to price it  
 10 out, like it was a new site, a new sale -- or not a new  
 11 sale, but a transaction was taking place." And this is in  
 12 context of an e-mail that is dated February 5th, 2016,  
 13 Exhibit 133.  
 14 And this, Your Honor, is that exhibit, and you see  
 15 the date of it, and you see that the date is before  
 16 February 25. The date is before that period of time with  
 17 settlement negotiations. It's in the period of time of the  
 18 business discussions.  
 19 In addition, during the opening statement, counsel  
 20 for the defendant tells the jury, "And so the evidence will  
 21 show that Mr. Sawyer and Mr. Schreiber started a process to  
 22 try to figure out how can we get more money before that  
 23 transaction happens?" And the opening continued.  
 24 This is an e-mail exchange between Mr. Sawyer and  
 25 Mr. Schreiber in -- and the testimony is about an earlier

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1 (Recess at 10:21 a.m.)  
 2  
 3 (IN OPEN COURT)  
 4 THE COURT: Go ahead and be seated.  
 5 It would be my preference, if you're inclined to  
 6 do an offer of proof, with respect to the other documents,  
 7 to do it over the lunch hour, assuming Mr. Baer is still  
 8 going to be here and available. Will that be acceptable?  
 9 MR. ERBELE: Yes, Your Honor.  
 10 THE COURT: Okay. Next witness is Schreiber?  
 11 MR. HINDERAKER: Yes, Your Honor.  
 12 THE COURT: Should we take up the other issue now?  
 13 MR. HINDERAKER: The issue of the --  
 14 THE COURT: The testimony.  
 15 MR. HINDERAKER: -- of Mr. Schreiber. I think we  
 16 should.  
 17 THE COURT: Do you have copies of the deposition?  
 18 MR. HINDERAKER: I do. If you would give me a  
 19 moment, what I have is my copy and I'm going to just make a  
 20 note and then give it to you.  
 21 The first bit of testimony that is being  
 22 challenged is on page 310. I have a flag by it.  
 23 THE COURT: Okay. If it's easier for you, you  
 24 could always use the document camera. That way you can see  
 25 it and I can, if that makes it easier.

1 e-mail exchange, before the acquisition, and they're  
 2 brainstorming about this whole idea of using the acquisition  
 3 as a basis to get more money.  
 4 And Mr. Sawyer, he says, "I would think that  
 5 tripling the size of the GWP, that's a reference to  
 6 insurance revenue, of business by application should be  
 7 significant enough to get around that unreasonably withheld  
 8 language."  
 9 So it's clear from the opening that the issue of  
 10 Schreiber and Sawyer, thinking that we have a licensing  
 11 event, and here's an opportunity to get much more money from  
 12 a new license, during the period of time of negotiations, is  
 13 put at issue by the defendant, and this is some of the  
 14 testimony that relates to that February 5 e-mail.  
 15 And, relatedly, on page 343 at lines 22 through  
 16 344 at line 15, and now we're speaking most particularly  
 17 about the commercial proposal time frame that was within the  
 18 negotiations, and at line 22, this is what it boils down to.  
 19 I mean if someone engaged us when we tried to engage or  
 20 before we tried to engage, talking about 10.8 and when the  
 21 notice came, we would have found a way to let them  
 22 transition in a way that would have had maintain a really  
 23 good working relationship. Love the client, want to  
 24 maintain a reference. Really, wasn't looking to do anything  
 25 other than figure out how do we stay whole and continue the

**307****309**

1 relationship and was there a license opportunity? Yes,  
 2 there was, but more important to us was that the long-term  
 3 relationship, the 3 million would have come and went, but I  
 4 had Chubb as a customer a decade and now a lawsuit? Come  
 5 on.  
 6 He's responding to his reaction and his time frame  
 7 of Exhibit 94, which is before the tenor turned to  
 8 settlement.  
 9 In Defense Counsel's letter to the Court of the  
 10 15th, at the end of the initial notice period, combined with  
 11 temporary forbearance of action made clear that the dispute  
 12 had crystallized, the litigation was on the table. That is  
 13 after these events. Counsel has taken the position that  
 14 it's after these events. Counsel has taken the position  
 15 that FICO has with Schreiber and Sawyer sought to have a  
 16 licensing opportunity to grab money, but this testimony is  
 17 necessary to fill in the rest of the story so that the jury  
 18 hears the rest of the story and enable Schreiber to say it  
 19 wasn't the money as much as the relationship that I was  
 20 trying to have as my top concern. So this is -- none of  
 21 this is within Rule 408, Your Honor.  
 22 THE COURT: All right. Very well. Counsel for  
 23 Federal?  
 24 MS. GODESKY: Your Honor, our objection to these  
 25 two excerpts at 310 and 343 are that they are nonresponsive,

1 Just do it on your -- all right.  
 2 MR. HINDERAKER: Your Honor, for housekeeping?  
 3 THE COURT: Yes.  
 4 MR. HINDERAKER: The video will run about 2 hours  
 5 and 11 minutes.  
 6 THE COURT: Okay. So you want to tell us when you  
 7 want us to stop or if you have an idea when we should stop,  
 8 Mr. Mayleben will just be here and available. Right around  
 9 noon, if there's a natural break.  
 10 MR. HINDERAKER: Yes. And then we spoke at one of  
 11 the pretrials about being able to give a brief introduction  
 12 of who this witness is to the jury before it starts. We've  
 13 exchanged what I expect -- what I will say and it's  
 14 agreeable so if you give me a moment to do that.  
 15 THE COURT: Absolutely. Thank you.  
 16 (Jury in.)  
 17  
 18 (IN OPEN COURT)  
 19 THE COURT: Mr. Hinderaker.  
 20 MR. HINDERAKER: The next witness that will be  
 21 called in our case, FICO's case, is a gentleman by the name  
 22 of Russell Schreiber. I think you should appreciate that we  
 23 will be playing all of the video of Mr. Schreiber's  
 24 testimony that which is offered by FICO and that which is  
 25 offered by the defendants. It will just be his whole

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1 argumentative narratives from a witness. He wouldn't be  
 2 allowed to give that kind of nonresponsive speech in court,  
 3 and the fact that these are deposition videos with no  
 4 opportunity for even a recross makes it even more  
 5 prejudicial than it would be if he did that here live.  
 6 MR. HINDERAKER: If I can?  
 7 THE COURT: Go ahead, Mr. Hinderaker.  
 8 MR. HINDERAKER: Just commenting that now the  
 9 basis for the objection has changed from what it was this  
 10 morning, and this is the examination of defense counsel at  
 11 the time, and I don't have a transcript to get the full  
 12 context, but those were the answers that he was given to the  
 13 questions and there wasn't any effort made at the time of  
 14 the deposition to reserve any objection.  
 15 THE COURT: Agreed, Mr. Hinderaker. I do find  
 16 that these bits of testimony are admissible, that any  
 17 objection to the nonresponsive nature of the answer, if it  
 18 is nonresponsive have been waived, and the e-mail, which is  
 19 Exhibit 133, is also admissible.  
 20 All right. We have exactly six minutes everyone.  
 21 See you back here.  
 22 (Recess at 10:31 a.m. till 10:39 a.m.)  
 23 (IN OPEN COURT)  
 24 THE COURT: This is up like the old days, we don't  
 25 have to roll up a television screen or anything, right?

1 presentation. And I'm just going to introduce Mr. Schreiber  
 2 to you.  
 3 Mr. Schreiber is a former FICO employee. He now  
 4 lives in New York where his deposition was taken on  
 5 October 24, 2018.  
 6 He was in sales, and when he left FICO his title  
 7 was Vice President of Health Care and Insurance, and he was  
 8 with FICO from 2006 to 2016. Thank you.  
 9 THE COURT: Very well. Thank you, Mr. Hinderaker.  
 10 RUSSELL SCHREIBER,  
 11 Whereupon, having been duly sworn upon his oath, testified  
 12 as follows:  
 13  
 14 (Whereupon, Deposition of RUSSELL SCHREIBER is  
 15 played, as follows:)  
 16 EXAMINATION  
 17 BY MS. JANUS:  
 18 A. Russell Schreiber.  
 19 Q. What is your work address?  
 20 A. I work from home. I'm self-employed, semi-retired.  
 21 Q. What is your home address?  
 22 A. It's 180 East End Avenue, New York, New York 10128.  
 23 Q. What is your current employment?  
 24 A. Self-employed. Investor and self-employed. Business  
 25 owner. Multiple irons in the fire.



**315****317**

1 Q. Okay. Yeah, so you were saying the client partner role,  
2 and it sounded like maybe -- in my mind, I've heard in the  
3 context of this case reference to client partners. And I'm  
4 trying to figure out where what you're describing fits in  
5 with the client partner role at FICO?  
6 A. Right. So my business card at the time might have said  
7 vice president, client partner. So client partner was a, at  
8 that time, was an organizational construct to bring industry  
9 experts or industry folks into the FICO fold and be focused  
10 on client relationships and making sure we're able to bridge  
11 the FICO technologies with industries. And so the people  
12 that did that, I was one of them. We're called client  
13 partners.  
14 Q. As part of your job, were you familiar generally with  
15 the way the clients you were responsible for used Blaze?  
16 A. Yes.  
17 Q. That was one of your job responsibilities?  
18 A. Yes.  
19 Q. Why was that?  
20 A. Well, it had multiple dimensions to it. One was to help  
21 solve the next one, so I could say, aha, you know, insurance  
22 company X uses it for something and that's a great kind of,  
23 you know, horizontal application that other insurers could  
24 be thinking about doing. And not, obviously, not a  
25 confidential handling, you know, insure confidential -- I

1 client is able to use the software that they've licensed  
2 under the terms of their license, correct?  
3 A. Say that again, please?  
4 Q. You would also need to know how widely that client is  
5 able to use the software that they've licensed under the  
6 term of their license?  
7 A. Right. So if you mean is do you mean like what the  
8 scope of the license is?  
9 Q. Yes.  
10 A. Because "widely" is -- yes, I would certainly want to  
11 read the scope of the license, yeah, yeah. I guess.  
12 Q. When did you first begin to work with Chubb?  
13 A. Chubb was my first client. Chubb was my -- my entree  
14 into FICO. That's -- you know, put me on the map. So that  
15 would have been February, maybe March of '16, so maybe a  
16 month or two we received an RFI, and I lead the response.  
17 MR. HINDERAKER: I think you said '16.  
18 THE WITNESS: Did I say '16? I meant 2006, thank  
19 you.  
20 BY MS. JANUS:  
21 Q. So you said you received an RFI in the spring of 2006.  
22 A. Right. I want to say February or March so early late,  
23 winter early spring. Yeah, it was right away.  
24 Q. And what is an RFI?  
25 A. The people's request for information be in our file. I

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1 would insure confidential information, by understanding how  
2 one insurance company uses it at that point, and then I can  
3 help others understand the art of the possible technology.  
4 So that was one reason why we had to know what they were  
5 doing.  
6 Another reason was to be able to bring the rest of  
7 FICO to bear and to help.  
8 Q. With that particular client?  
9 A. Yeah.  
10 Q. Yep.  
11 A. So I'd bring professional services person in to help  
12 integrate to say Blaze and Duck Creek. You know, pick a  
13 product, whatever.  
14 Q. But generally the scope of the license with a given  
15 client was something that you were familiar with?  
16 A. Or I had to figure it out, but, yes. Sure.  
17 Q. And that would be important for what you are doing as a  
18 client partner, I take it, because you need to know whether  
19 there are additional products or services that could be sold  
20 to a given client, correct?  
21 A. At one end or if that product is being sunset, and they  
22 needed to know that it was being, you know, shelved in two  
23 years, we can help them manage their way through that  
24 process.  
25 Q. Yep. And you would also need to know how widely that

1 did an RFP, a request for proposal, but it was a document  
2 that we received to be able to present to Chubb, a solution  
3 and pricing and an approach to a problem.  
4 Q. And do you recall, I know it was a while ago, but do you  
5 recall off the top of your head just generally what nature  
6 of the request for information or proposal was from Chubb?  
7 A. Oh, yeah, yeah. It's funny how things you remember.  
8 Anyway, so this was to create an automated renewals platform  
9 for their specialty lines of business. They had I think  
10 like a 170 or maybe 220 different products in that business.  
11 And so that would be like small manufacturers maybe or  
12 nurses or, you know, plumbers. But it's what they called  
13 specialty lines.  
14 And so the way they sold those products is they  
15 have the underwriting process where they have underwriter  
16 like price out how risky is this thing and set out an  
17 insurance price premium. What was happening is they had a  
18 corporate initiative, their agenda was to be able to sell to  
19 a larger market, which meant smaller value, smaller dollar  
20 value, so I forget the numbers but most of the average  
21 policy price was maybe -- let's call it \$100,000 for this  
22 discussion. They wanted to be able to move down to a bigger  
23 market, more prospective customers. Say the average policy  
24 is \$20,000, so moving to like the Fortune 100s to the  
25 Fortune 10,000, that kind of concept.

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1 The way their business worked at that time was  
2 they would write the new policy, they'd get a new prospect,  
3 and they'd assess the risk. And then they would, if they  
4 won the work, they'd book the policy and they would have a  
5 new customer.

6 The problem was that on renewals, they would do a  
7 full review of the each policy so that it was effectively  
8 underwriting the whole customer from scratch, which is very  
9 expensive. So the premise of this RFI or RFP or a request  
10 for a pitch was, our solution was how can they automate the  
11 underwriting -- the renewal process so that they could move  
12 into a business model where they were -- had less manual  
13 intervention with the renewal process.

14 So there's going to be some insurance customers  
15 that would just, you know, not even touch this, just  
16 automatically renew it. There were others I think that were  
17 at high risk. They need to really do full underwriting.  
18 There were some that were in the middle. So they called  
19 that low touch, no touch, high touch is, you know, and it's  
20 become pretty big in the industry now.

21 Q. And the idea was this renewal process would become a low  
22 touch?

23 A. So they would be able to segment the customers across  
24 these 170 or 200-plus products. And, again, don't quote me  
25 on the product count, but there was hundreds of them. They

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1 could segment the customers at the renewal process into high  
2 touch, low touch, no touch. So if they have the high touch  
3 ones were the more expensive ones to renew because they had  
4 to throw some people out, look at the buildings, you know,  
5 check the head count, make sure the staff is right. So it's  
6 how do you price that premium.

7 Whereas, the no touch, it's like our auto  
8 insurance. You just get a new bill for the next year,  
9 right? So they were trying to get more into the low to no  
10 touch.

11 Q. So the folks who aren't familiar with either the  
12 insurance industry or Blaze, can you describe in general  
13 terms how a product like Blaze would be used in a solution  
14 like this?

15 A. Sure. So insurance policies are annual policies. So  
16 about three months before the end of a year, the policy  
17 information and the claim information would be transferred,  
18 be fed into a Blaze engine, and the Blaze software would  
19 look at that information and rules would be -- rules in  
20 Blaze would be applied to it.

21 So the rule might be, oh, there were no claims  
22 that year so that means we could do a low or no touch. Or  
23 they had claims this year, so now it must be a high touch.  
24 And the magic here was that Blaze, the rules that we're  
25 talking about were set up in such a way that human beings

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1 could maintain them. So it didn't require like some, you  
2 know, MIT Ph.D.'s. You could bring a business analyst could  
3 maintain those business rules.

4 So, right, so once a year a feed would come in,  
5 the rules would be compared, and then the policies would be  
6 segmented into high touch, low touch, no touch.

7 Q. Well, I guess, again, for those who aren't familiar with  
8 Blaze and necessarily this industry, you're talking about a  
9 system of applying rules to or a renewal process, and I take  
10 it there is some additional programming that goes along with  
11 creating a system that works, for example, in Chubb for an  
12 auto renewal process. It's not just like you can put Blaze  
13 in there and it sort of just automatically works?

14 A. Well, that's correct. You're right.

15 Q. Okay. And so I'm trying to, how would you refer to  
16 that? Is it that Blaze is used in applications that are  
17 developed by Chubb or by, you know, Chubb with FICO's  
18 assistance to use Blaze in these types of solutions?

19 A. Right. So Blaze, in this case it did integrate with  
20 other -- other components. Like there was, I think I  
21 mentioned Duck Creek was a pricing engine. There would have  
22 been a policy platform, a claims platform. So it would have  
23 interacted with those three things or whatever they were,  
24 those things.

25 But there were cases where Blaze was a standalone.

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1 Not in this case, but Blaze would serve as a standalone  
2 engine as well.

3 Q. Okay. So in February/March, FICO received the RFI. Can  
4 you tell us generally what you recall happening after FICO  
5 received that RFI?

6 A. Sure, sure. So, gosh, where was our office then? So it  
7 was -- it was like the garment district where we had an  
8 office at that time. So I sat with our Blaze team. Larry  
9 and Dale I think were their names. Anyway, sat with those  
10 guys, and we created a proposal.

11 Q. And then you presented it?

12 A. Oh, I'm sorry, yes, we created a proposal and then,  
13 well, probably April-ish we presented -- I lead the  
14 presentation of our response to maybe a dozen people in the  
15 Chubb side up in their -- I want to say Connecticut. It's  
16 funny what you remember what you know.

17 But anyway, one of the offices we went up to,  
18 yeah, it was Connecticut. I went up to the Connecticut  
19 office, and we presented our answer to their questions.

20 Q. And do you recall generally what time of year that was?

21 A. It would have been pretty quickly -- call it April.  
22 April, yeah, mid-April. Because the deal was done  
23 June 30th.

24 Q. Were there discussions at that time that you were  
25 involved with relating to the scope of the license --

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1 Q. Okay. And then there's an Amendment Two that follows.  
 2 And were you involved in that?  
 3 A. Yes.  
 4 Q. You mentioned that you would be -- you were the legal  
 5 side, working with the business side, Mr. Schreiber,  
 6 Mr. Wachs.  
 7 Can you give us an understanding of how that  
 8 interaction -- and specific to this license agreement -- but  
 9 how that interaction between the in-house lawyer and the  
 10 business person, how you operate together to come to draft  
 11 what is the license agreement?  
 12 A. Sure. At Fair Isaac -- I think all companies are  
 13 different, but at Fair Isaac, we had a contract request  
 14 process that was automated. So the business would complete  
 15 a contract request form. And, again, this was an automated  
 16 document. They would submit that. And that form would go  
 17 through who is the customer, what are they licensing, what  
 18 are the restrictions of the license or the scope of the  
 19 license? So, for example, can they use it worldwide? Can  
 20 they only use it in the U.S.? Is there a seat restriction  
 21 on how many licenses they're buying, or is it  
 22 enterprise-wide? What specific components of the software  
 23 are they licensing? And then also if there is any  
 24 restriction on how they're using it -- the client is using  
 25 it within their business.

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1 Then they would also include fees. If there is to  
 2 be a master services agreement, that could be in the  
 3 contract request form. The maintenance agreement, as far as  
 4 how much were we going to charge for maintenance; the term  
 5 of the -- of all of the agreements together, you know, how  
 6 long is the customer licensing the software for, how long  
 7 are they buying maintenance for.  
 8 So they would complete that form, and then there  
 9 was an automated system based on selections that the  
 10 salesperson had made as far as software that was at issue.  
 11 That would -- the answer to that question would  
 12 automatically route the request form to the attorney  
 13 responsible for that piece of software.  
 14 So in this case, Blaze Advisor, that would have  
 15 been selected from the drop-down menu, and the request form  
 16 would have been automatically routed to me to work on.  
 17 So once a request form is routed to the attorney,  
 18 you would get an email saying, you have a request pending.  
 19 You could go into the system, pull down the request form and  
 20 then start working on the agreement.  
 21 And then if I had any questions around answers  
 22 that were in the form or as I started drafting, I would just  
 23 call the person who submitted the request form, who I think  
 24 was Russ Schreiber in this instance, but I don't recall his  
 25 specific role in the deal.

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1 Q. Understood. And on this Exhibit J1, who is the client?  
 2 A. The client is Chubb & Son, a division of Federal  
 3 Insurance Company.  
 4 Q. And if you turn to the signature page of the main body  
 5 of the agreement, who signed it -- or what signed it as  
 6 client?  
 7 A. It was signed by client Chubb & Son.  
 8 Q. And if we go to Amendment One, is that -- is that still  
 9 true, the client is Chubb & Son, a division of Federal?  
 10 A. Yes.  
 11 Q. And if we turn to the signature page of Exhibit 1, that  
 12 signature page is in the name of whom?  
 13 A. You are looking at Exhibit 1?  
 14 Q. Of Amendment One.  
 15 A. The signature block on Amendment One is client Chubb &  
 16 Son.  
 17 Q. And then if we just do Amendment Two, is it the same?  
 18 Client is Chubb & Son, a division of Federal. The signature  
 19 line is client Chubb & Son, a division of Federal Insurance  
 20 Company?  
 21 A. Yes.  
 22 Q. I'm going to put a marker where that is in my notebook,  
 23 and I suggest you might do something of the same, because  
 24 we'll be going back and forth to it.  
 25 A. Okay.

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1 Q. And do you recall who your counterpart was at Chubb &  
 2 Son that you worked with in the drafting of this agreement?  
 3 A. Yes. It was a gentleman named Jim Black.  
 4 Q. And could you please go to Exhibit P303?  
 5 A. Yes.  
 6 Q. And that is an email from yourself to J.W. Black?  
 7 A. Yes.  
 8 Q. Would you like to just tell the jury the purpose of this  
 9 email and what you did?  
 10 A. So it looks like I had spoken with him the day prior to  
 11 sending this email, because I'm referencing a phone  
 12 conversation from the prior day. And then I've attached an  
 13 updated version of the MSA, which would be a master services  
 14 agreement, with changes that I had made in tracked format.  
 15 And then I'm asking him to contact me to discuss remaining  
 16 open items after he's had a chance to review. And then I  
 17 also attached the standard Blaze software license and  
 18 maintenance agreement for his review, and then indicated  
 19 that statements of work would be sent to him that afternoon,  
 20 June 6th, 2006.  
 21 Q. Statements of work, is that a document that relates to  
 22 the master services agreement?  
 23 A. Yes.  
 24 Q. And a statement of work is a what?  
 25 A. A statement of work would outline the specific work that

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1 the services team was going to be doing, and then if there  
 2 were specific deadlines, timelines or deliverables related  
 3 to that work, as well as fees and how those were going to be  
 4 charged and paid.  
 5 Q. So the master services agreement is as it says, the  
 6 master agreement under which statements of work would be  
 7 performed. Is that fair?  
 8 A. Yes.  
 9 Q. Given that you were sending him back edits and changes  
 10 to the master services agreement and sending him the  
 11 original -- or the standard form Blaze Advisor license  
 12 agreement, it appears that you were negotiating or dealing  
 13 with the master services agreement first.  
 14 Is that your recollection?  
 15 A. I don't recall that specifically, but based on the  
 16 email, it would seem that was the case, yes.  
 17 Q. And then with respect to the client relationship, what's  
 18 the purpose of the master services agreement and the  
 19 provision of professional services?  
 20 A. So generally, the professional services team would meet  
 21 with the client, their -- perhaps their business, also maybe  
 22 their technology team, to talk about how they want to  
 23 implement or access the software and then how they want the  
 24 rules drafted, which is what Blaze Advisor very  
 25 simplistically runs. And so talking with the client around

1 A. He has quite a few edits. He has essentially deleted  
 2 all of our original license restrictions and inserted his  
 3 own preferred language.  
 4 Q. Okay. We'll be going through the whole history, so we  
 5 will take it one step at a time.  
 6 A. Okay.  
 7 Q. And then if we go to paragraph 3.6 from Mr. Black, what  
 8 do we see there?  
 9 A. Again, it looks like he has deleted all of our original  
 10 language, and he has inserted a new paragraph that he's  
 11 proposing that we accept instead.  
 12 Q. And his paragraph relates to the use of Blaze Advisor by  
 13 a consultant called ACS Commercial Solutions?  
 14 A. Yes.  
 15 Q. Okay. We're on the same paragraph?  
 16 And in this -- what is Mr. Black seeking by his  
 17 redlining at 3.6?  
 18 A. He's wanting Fair Isaac's acknowledgement and agreement  
 19 that Chubb & Son, they have some infrastructure operations  
 20 that are outsourced to a company called ACS Commercial  
 21 Solutions. So he's asking for Fair Isaac to grant ACS  
 22 Commercial Solutions and their affiliates, employees,  
 23 agents, consultants and subcontractors the right to use the  
 24 licensed software on behalf of client Chubb & Son for the  
 25 sole and exclusive purpose of fulfilling ACS Commercial

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1 how they were going to use the rules, what kind of rules  
 2 they need. And then that may also help to inform how the  
 3 licenses needs to be scoped, ultimately, depending on what  
 4 may come out of those conversations.  
 5 Q. Then if you would turn to P307. And as we see, this is  
 6 from J.W. Black to yourself?  
 7 A. Yes.  
 8 Q. Perhaps just read what he says to you.  
 9 A. So he said, "Jandeen, I have attached the SLA with some  
 10 Chubb revisions. Let me know when you would like to  
 11 schedule a call to review. Thanks, Jim."  
 12 Q. And SLA stands for software license agreement?  
 13 A. Yes.  
 14 Q. All right. So if we look at -- and then attached to his  
 15 email is indeed a version of the -- if we can go to the next  
 16 page please -- a version of the software license and  
 17 maintenance agreement showing the redlines that you received  
 18 from Mr. Black?  
 19 A. Yes.  
 20 Q. Is there any change from Mr. Black to the definition of  
 21 client as Chubb & Son?  
 22 A. No, there is not.  
 23 Q. Let's look at -- or next, paragraph 3.1 on the third  
 24 page, called "License Restrictions." What does Mr. Black  
 25 suggest there by his redlines?

1 Solutions' obligations to provide information, technology,  
 2 services to client.  
 3 Q. Okay. So in summary, he's asking Fair Isaac to get  
 4 permission to a consultant, ACS, to use Blaze Advisor?  
 5 A. Yes.  
 6 Q. And then let's go to paragraph 9.3, Effective  
 7 Termination.  
 8 Mr. Black suggests some changes there as well?  
 9 A. Yes. He struck the -- I believe the last sentence --  
 10 the last two senses of Fair Isaac's original language.  
 11 Q. Is what he struck related to a certification  
 12 requirement?  
 13 A. Yes.  
 14 Q. And then if we go to paragraph 10.8. If we look at  
 15 that, Mr. Black made some changes to that as well?  
 16 A. Yes, he did.  
 17 Q. One of the changes that he makes is to -- well, let me  
 18 back up.  
 19 The first sentence without change is, "Neither  
 20 party shall, without the written consent of the other,  
 21 assign or transfer the agreement."  
 22 Have I read that right?  
 23 A. Yes.  
 24 Q. So that first sentence is mutual, is it not?  
 25 A. It is mutual, yes.

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1 Q. Okay. And then looking at the edit in the second  
2 sentence, "In the event of a change of control of either  
3 party." So that's an edit of Mr. Black to make that second  
4 sentence mutual as well?  
5 A. Correct.  
6 Q. And we'll see if it was accepted or not by FICO shortly.  
7 And then Mr. Black also adds, regarding FICO's  
8 consent, "which will not be unreasonably withheld"?  
9 A. Yes.  
10 Q. Those are his edits to 10.8?  
11 A. Correct.  
12 Q. And then let's go forward in time to Exhibit P309:  
13 And this is your email to Mr. Black of June 27th?  
14 A. Yes.  
15 Q. So his to you, the one we just looked at, was on  
16 June 26th. So the next day you are back to him? Fair?  
17 A. Yes.  
18 Q. Okay. And what you say -- would you just tell us what  
19 you said to him, please?  
20 A. Sure. "Jim, attached is a redlined revised license  
21 agreement incorporating the changes you requested to the  
22 extent Fair Isaac is able to agree to them."  
23 Q. So each of his redline changes was given review, was it?  
24 A. Yes.  
25 Q. And to the extent Fair Isaac would accept them, it did?

1 identifying it more specifically. FICO and you and  
2 Mr. Black are working on the conditions under which FICO  
3 will consent to ACS Consulting being permitted access to  
4 Blaze Advisor?  
5 A. Yes.  
6 Q. It wasn't rejected out of hand like the changes to 3.1?  
7 A. Correct.  
8 Q. The last sentence of your red lining, would you read  
9 that to us, please?  
10 A. Of 3.6?  
11 Q. I'm sorry. Yes, of 3.6.  
12 A. "The rights granted to ACS herein shall not be extended  
13 to any other third party without the prior express written  
14 consent of Fair Isaac."  
15 Q. And when we get to the, when we go back to the J1, the  
16 final agreement, we will check on the conformance of that to  
17 the final language.  
18 And then let's look at 9.3. What happened to  
19 Mr. Black's suggested changes?  
20 A. It appears they were accepted. There are no further red  
21 lines in 9.3.  
22 Q. Would you look at the language of 9.3 in Exhibit 309 to  
23 the language in 9.3 in Exhibit J1?  
24 A. Yes, they are the same.  
25 Q. That is to say, you returned to the standard FICO

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1 A. Correct.  
2 Q. And to the extent it could not, it did not?  
3 A. Correct.  
4 Q. So let's look at what happened then.  
5 Attached to your email, P309, is the next version  
6 of the software license and maintenance agreement that you  
7 sent back to Mr. Black?  
8 A. Yes.  
9 Q. So paragraph 3.1, what is FICO's response to all of the  
10 red lining that Mr. Black had done?  
11 A. It was rejected, and we, I, reinserted our original 3.1  
12 with the license restrictions.  
13 Q. So Mr. Black's suggestions, were they rejected in total?  
14 A. It appears so, yes. Yep.  
15 Q. And then if we go to 3.6, please. What was, what was  
16 FICO's response to his efforts, his seeking of permission  
17 for ACS the consultant?  
18 A. It's still in the agreement with red line in tract  
19 changes, what we call it in the law department, but the  
20 original Fair Isaac language that he struck has been  
21 deleted. So I'm not sure if I still had questions for him  
22 in regard to what he's proposing in 3.6, since I did not  
23 completely accept it, but it appears that we're working  
24 toward accepting some version of 3.6.  
25 Q. Or putting it, in the words of the consultant,

1 language for Section 9.3?  
2 A. Yes.  
3 Q. And then let's look at your response to his changes to  
4 10.8.  
5 Is it fair to say that the only change that FICO  
6 accepted was that consent would not be unreasonably  
7 withheld?  
8 A. Yes.  
9 Q. All other changes that Mr. Black had suggested were  
10 rejected?  
11 A. Correct.  
12 MR. HINDERAKER: Your Honor, if you would like to  
13 break, this would be a time.  
14 THE COURT: That sounds like a great idea. Thank  
15 you.  
16 Ladies and gentlemen, we'll take our afternoon  
17 recess. As always, no research. Talk about anything you  
18 want except the case.  
19 THE CLERK: All rise for the jury.  
20 IN OPEN COURT  
21 (JURY NOT PRESENT)  
22 THE COURT: Just for planning purposes, what do  
23 you think the time, excuse me, timeline is?  
24 MR. HINDERAKER: I almost -- I really hate to say  
25 this, because of the impact it has on Ms. Boone, but I could

<p style="text-align: right;"><b>459</b></p> <p>1 see that I would be going for a while yet, you know, maybe</p> <p>2 as much as an hour, and I'm disappointed in that because</p> <p>3 cross-examination my not be finished today.</p> <p>4 THE COURT: Will you be doing the</p> <p>5 cross-examination, Ms. Godesky?</p> <p>6 MS. GODESKY: Yes.</p> <p>7 THE COURT: And your best estimate? I know it's</p> <p>8 hard to say.</p> <p>9 MS. GODESKY: 45 minutes, 30 minutes.</p> <p>10 THE COURT: Yeah. I don't want to keep the jury</p> <p>11 here to 5:30 or quarter to 6 on Friday. We'll kind of play</p> <p>12 it by ear, but it sounds like where we're going to break is</p> <p>13 at the end of the direct.</p> <p>14 Does that sound about right to you,</p> <p>15 Mr. Hinderaker?</p> <p>16 MR. HINDERAKER: It does. I could imagine that</p> <p>17 the, I could imagine that it might be an early release</p> <p>18 today.</p> <p>19 THE COURT: Okay.</p> <p>20 MR. HINDERAKER: I can maybe talk faster and see</p> <p>21 what I can do, but that is a judgment.</p> <p>22 THE COURT: Okay. Well, we'll see where we are.</p> <p>23 We'll try and get through the witness, if at all possible.</p> <p>24 We'll take 15 minutes, be back in at quarter to</p> <p>25 four.</p>	<p style="text-align: right;"><b>461</b></p> <p>1 A. There's an updated version of the agreement. I've made</p> <p>2 some additional changes, most were grammatical, and also</p> <p>3 clean up kinds of changes. So I did not highlight those.</p> <p>4 Substantive changes that were made after input from other</p> <p>5 groups and based on the business terms that are now included</p> <p>6 in Exhibit A. There are a few of those.</p> <p>7 Q. Okay.</p> <p>8 A. And I included notes explaining the changes that I made.</p> <p>9 Q. And as you communicated -- transmitting the document</p> <p>10 back to Mr. Black?</p> <p>11 A. Yes.</p> <p>12 Q. And the email does reference the fact that, that you had</p> <p>13 a discussion with him the day before. Do you have any</p> <p>14 memory of that?</p> <p>15 A. I do not. It does say we're having a discussion that</p> <p>16 same day as the day of the email.</p> <p>17 Q. Okay. And any recall of that?</p> <p>18 A. No.</p> <p>19 Q. No. All right. Well, let's just go through these</p> <p>20 provisions again.</p> <p>21 Looking at 3.1.</p> <p>22 A. Yes.</p> <p>23 Q. Is it fair to say that that now is FICO standard</p> <p>24 language per your draft to him of a couple days earlier?</p> <p>25 A. Yes.</p>
<p style="text-align: right;"><b>460</b></p> <p>1 Oh, and, Mr. Hinderaker, to the extent that you</p> <p>2 were asking about Exhibit 145, which was talked about but</p> <p>3 not actually displayed during the depo, that's in. It was</p> <p>4 talked about, and it was obviously going to be displayed.</p> <p>5 MR. HINDERAKER: Yeah, that would be fine.</p> <p>6 THE COURT: Okay.</p> <p>7 MS. GODESKY: Sorry.</p> <p>8 THE COURT: 145. With the video depo, it was</p> <p>9 referenced and talked about; it just wasn't displayed.</p> <p>10 MS. GODESKY: I see. That's on our list. Okay.</p> <p>11 All right. Thank you.</p> <p>12 (Recess taken 3:32 p.m.)</p> <p>13 3:47 p.m.</p> <p>14 IN OPEN COURT</p> <p>15 (JURY PRESENT)</p> <p>16 THE COURT: You may proceed.</p> <p>17 MR. HINDERAKER: Thank you, Your Honor.</p> <p>18 BY MR. HINDERAKER:</p> <p>19 Q. Ms. Boone, would you turn to Exhibit P310, please?</p> <p>20 A. Yes.</p> <p>21 Q. This is an email from yourself to Mr. Black on</p> <p>22 June 29th, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And what are you communicating to Mr. Black in this</p> <p>25 email?</p>	<p style="text-align: right;"><b>462</b></p> <p>1 Q. And then if we go to paragraph 3.6, the third party,</p> <p>2 there's still -- work is still being done on that provision?</p> <p>3 A. Yes. And I've added some highlighted language for his</p> <p>4 review.</p> <p>5 Q. Yes. And would you tell us, read for us what the</p> <p>6 highlighted language is that you added?</p> <p>7 A. "Provided that such use is otherwise subject to the</p> <p>8 terms and conditions of this agreement and does not exceed</p> <p>9 the limitations on use and other restrictions set forth</p> <p>10 herein."</p> <p>11 Q. So that's an additional limitation that FICO proposed to</p> <p>12 Chubb &amp; Son?</p> <p>13 A. Correct.</p> <p>14 Q. And is the last sentence still the same as before, the</p> <p>15 rights granted shall not be extended to any other third</p> <p>16 party?</p> <p>17 A. Yes, that's consistent with the prior draft.</p> <p>18 Q. All right. And then if we go to paragraph 9.3, effect</p> <p>19 of termination, has that returned or is that now the</p> <p>20 standard FICO language?</p> <p>21 A. Yes, that's consistent with the FICO standard language.</p> <p>22 Q. And then if we go to paragraph 10.8, is it fair to say</p> <p>23 that it's standard FICO language, say for the addition of</p> <p>24 Mr. Black's suggestion of consent not unreasonably withheld?</p> <p>25 A. Correct.</p>



<p style="text-align: right;"><b>463</b></p> <p>1 Q. So that's the progress that we're making in the</p> <p>2 negotiations of the language?</p> <p>3 A. Yes.</p> <p>4 Q. Then let's go to Exhibit 311. This is also on</p> <p>5 June 29th?</p> <p>6 A. Yes.</p> <p>7 Q. And this must be the telephone call that you were</p> <p>8 referencing earlier?</p> <p>9 A. Correct.</p> <p>10 Q. And is it fair to conclude from the email that some</p> <p>11 changes were made in your discussion with him?</p> <p>12 A. Yes.</p> <p>13 Q. And then those were memorialized in the document that</p> <p>14 you transmitted by Exhibit 311?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. And as we know from J1, the license agreement is</p> <p>17 in fact signed, the main body of the license agreement as</p> <p>18 it's signed the next day on June 30th.</p> <p>19 So let's go to paragraph 3.1 on this draft. And</p> <p>20 is there a change there?</p> <p>21 A. Yes, there is. In subsection two.</p> <p>22 Q. And what is that, what is that change?</p> <p>23 A. So we're carving out an exception around the restriction</p> <p>24 where otherwise Chubb &amp; Son cannot alter, change, modify</p> <p>25 adapt, translate or make derivative works of the Fair Isaac</p>	<p style="text-align: right;"><b>465</b></p> <p>1 effective termination provision?</p> <p>2 A. That section has been agreed to. There are no further</p> <p>3 red lines or open items.</p> <p>4 Q. And as we saw before, that's now back to standard FICO</p> <p>5 language?</p> <p>6 A. Yes.</p> <p>7 Q. And then if we go to paragraph 10.8, it looks like, what</p> <p>8 is that telling you there?</p> <p>9 A. There are no open items remaining in 10.8, and that</p> <p>10 appears to be FICO's standard language.</p> <p>11 Q. With the exception of "shall not be unreasonably</p> <p>12 withheld"?</p> <p>13 A. With that exception, yes. We agreed to include that.</p> <p>14 Q. Would you go to -- before we go forward to June 30th,</p> <p>15 would you go to Exhibit P336 please?</p> <p>16 A. Yes.</p> <p>17 Q. All right. And this master services agreement, look at</p> <p>18 the, I guess look at the last page. The master services</p> <p>19 agreement is the final signed document?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And at the signature page the client is whom?</p> <p>22 A. Chubb &amp; Son, a division of Federal Insurance Company.</p> <p>23 Q. And the same is true as being the client on the first</p> <p>24 page of the master services agreement?</p> <p>25 A. Yes.</p>
<p style="text-align: right;"><b>464</b></p> <p>1 products. And we're calling out an exception there to say</p> <p>2 that "other than in connection with rules" they cannot</p> <p>3 alter, change, modify, adapt, translate or make derivative</p> <p>4 works.</p> <p>5 Q. Okay. Was that a suggestion from Mr. Black?</p> <p>6 A. I don't recall.</p> <p>7 Q. Okay. It's not standard FICO language, though?</p> <p>8 A. Correct.</p> <p>9 Q. Is everything else in paragraph 3.1 standard FICO</p> <p>10 language?</p> <p>11 A. I believe so, yes.</p> <p>12 Q. Looking specifically at 3.1 sub, you know, small Roman</p> <p>13 IV, can you tell, is that standard FICO language?</p> <p>14 A. Yes.</p> <p>15 Q. And then if we go to paragraph 3.6, what's the state of</p> <p>16 negotiations regarding permission for ACS to have access and</p> <p>17 use of Blaze Advisor?</p> <p>18 A. It appears that we have agreed to the language at this</p> <p>19 point. And the highlighted language that I added and sent</p> <p>20 to him in my prior email is now unhighlighted, which would</p> <p>21 lead me to believe it's been accepted by the parties.</p> <p>22 Q. It's still there?</p> <p>23 A. It's still there, yes.</p> <p>24 Q. Yes. Yes. And then if we go to 9.3, what's the state</p> <p>25 of the negotiations over the language of the term -- the</p>	<p style="text-align: right;"><b>466</b></p> <p>1 Q. And if you go to article 17 in the master services</p> <p>2 agreement that's titled Notices. It's on page 21684 of the</p> <p>3 Bates?</p> <p>4 A. Yes.</p> <p>5 Q. And under Notices for Chubb, James Black is called out?</p> <p>6 A. Correct.</p> <p>7 Q. And how does Mr. Black identify himself?</p> <p>8 A. He is in the vendor management group with Chubb &amp; Son, a</p> <p>9 division of Federal Insurance Company, in Warren,</p> <p>10 New Jersey.</p> <p>11 Q. Thank you. Now I'd like to go, that being the history</p> <p>12 of the negotiations, I'd like to go to J1. During the, as</p> <p>13 we saw, as we said at the outset, the client in the final</p> <p>14 master -- the client in the final software license and</p> <p>15 maintenance agreement is Chubb &amp; Son, the division.</p> <p>16 In all of your conversations with Mr. Black, was</p> <p>17 there any request to make that anything, make the client</p> <p>18 somebody else?</p> <p>19 A. Not that I recall, but it was never in a red line</p> <p>20 document from him.</p> <p>21 Q. And we also saw that, yes.</p> <p>22 From your, you know, in your role in drafting</p> <p>23 these agreements, working with the business folks, but in</p> <p>24 your understanding of the commercial purpose of the license</p> <p>25 agreement, does the license agreement grant rights to</p>

<p style="text-align: right;"><b>467</b></p> <p>1 anybody other than the client?</p> <p>2 A. No.</p> <p>3 MS. GODESKY: Objection.</p> <p>4 THE COURT: State your objection more fully,</p> <p>5 please.</p> <p>6 MS. GODESKY: I think this is a sword/shield</p> <p>7 problem.</p> <p>8 THE COURT: Yeah. Why don't you rephrase the</p> <p>9 question.</p> <p>10 MR. HINDERAKER: Is --</p> <p>11 THE COURT: Do you want to approach here?</p> <p>12 MR. HINDERAKER: Well, I can try to rephrase it</p> <p>13 first.</p> <p>14 BY MR. HINDERAKER:</p> <p>15 Q. As the, as the lawyer involved in the drafting of the</p> <p>16 agreement, the software license and maintenance agreement,</p> <p>17 is there significance in the drafting of the agreement in</p> <p>18 all of the provisions to the identification of the client?</p> <p>19 MS. GODESKY: Same objection.</p> <p>20 THE COURT: Overruled.</p> <p>21 THE WITNESS: Yes.</p> <p>22 BY MR. HINDERAKER:</p> <p>23 Q. What is that significance?</p> <p>24 A. All of the other provisions of the software license and</p> <p>25 maintenance agreement are drafted between Fair Isaac and the</p>	<p style="text-align: right;"><b>469</b></p> <p>1 client, yes.</p> <p>2 Q. And is there anything in the agreement itself that</p> <p>3 recognizes that fact?</p> <p>4 A. The way in which the license grant and the restrictions</p> <p>5 are drafted would be reflective of the intent of the parties</p> <p>6 with regard to who can use the software.</p> <p>7 Q. The scope of the license grant in the original, the</p> <p>8 original agreement, we've had other testimony. So maybe I</p> <p>9 don't have to take your time, but if we go to Exhibit A --</p> <p>10 A. Yes.</p> <p>11 Q. -- it defines definition of named application?</p> <p>12 A. Correct.</p> <p>13 Q. So the original agreement was in FICO terms a named</p> <p>14 application license?</p> <p>15 A. Yes.</p> <p>16 Q. And the definition of the application came from whom?</p> <p>17 A. I believe that would have come from Chubb, because it</p> <p>18 is, it's saying in the, in subsection A that the application</p> <p>19 is Chubb's specialty insurance's underwriting and automated</p> <p>20 policy renewal application.</p> <p>21 Q. And you've described for us the components of Exhibit A</p> <p>22 in terms of scope, quantity and so forth.</p> <p>23 I would like to go to Amendment One and just</p> <p>24 understand how the documents work.</p> <p>25 So if we go to Amendment One, in contrast to the</p>
<p style="text-align: right;"><b>468</b></p> <p>1 client. So it's significant as to how the client is</p> <p>2 identified because you have things like -- well, you have</p> <p>3 rights and obligations of the client and rights and</p> <p>4 obligations of Fair Isaac.</p> <p>5 So it's important to understand who those parties</p> <p>6 are specific to the license grant, confidentiality</p> <p>7 protection, indemnification and a host of other legal</p> <p>8 provisions.</p> <p>9 Q. We have seen when we were looking at paragraph 3.1, we</p> <p>10 seen throughout the documents there are reference to the</p> <p>11 client shall, the client shall.</p> <p>12 A. Correct.</p> <p>13 Q. What is the significance of that then referencing back</p> <p>14 to the definition?</p> <p>15 A. It's signifying that that's an obligation on the part of</p> <p>16 the client. So the party that has that right or obligation,</p> <p>17 depending on which section you are looking at, is Chubb &amp;</p> <p>18 Son, a division of Federal Insurance Company as the client.</p> <p>19 Q. We haven't reviewed every element of the license</p> <p>20 agreement, but recognizing that, let me ask you this</p> <p>21 question: In FICO software license agreements for Blaze</p> <p>22 Advisor, is the license agreement itself in any way tied to</p> <p>23 the gross written premium of the client or the total revenue</p> <p>24 of the client?</p> <p>25 A. The fee is generally related to the size, revenue of the</p>	<p style="text-align: right;"><b>470</b></p> <p>1 many pages of the main body, Amendment One is two pages.</p> <p>2 A. Yes.</p> <p>3 Q. So how does Amendment One and the main body of the</p> <p>4 license agreement, how do they interrelate?</p> <p>5 A. So once you have the main license agreement, if anything</p> <p>6 in that document is changing, you can do that by amendment.</p> <p>7 And an amendment is generally shorter, not always, but</p> <p>8 oftentimes shorter, because you're simply changing things</p> <p>9 that were originally agreed to in the license agreement, in</p> <p>10 this case the original agreement. So you don't have to</p> <p>11 restate the entire agreement.</p> <p>12 Q. And if in Amendment One there is -- and everything in</p> <p>13 Amendment One that is not referenced relative to the</p> <p>14 original agreement, is it fair to say that the terms and</p> <p>15 limitations and conditions of the original agreement apply?</p> <p>16 A. Correct.</p> <p>17 Q. And the same is true with Amendment Two, is that</p> <p>18 correct, being, I guess, that also may be a three-page</p> <p>19 document.</p> <p>20 The amendment states what's different, and the</p> <p>21 main body of the agreement is otherwise in full force and</p> <p>22 effect?</p> <p>23 A. Correct.</p> <p>24 Q. Now, Amendment Two is calling itself an enterprise-wide</p> <p>25 license. As you were drafting the agreement, in light of</p>

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1 avoid the snow.  
 2 A. I appreciate it.  
 3 Q. Mr. Ivey, can you tell the jury your current employer  
 4 and role?  
 5 A. So I'm the vice president of product support at FICO.  
 6 Q. And how long have you worked at FICO?  
 7 A. Since 2003, so about 20 years.  
 8 Q. And how long have you been in the product support group?  
 9 A. Since 2014, so nine years.  
 10 Q. What does the product support group do at FICO?  
 11 A. So the product support group is -- essentially it's a  
 12 help desk. So if you were to call in for help on something,  
 13 we will help out with the software and the errors that are  
 14 occurring.  
 15 Q. Could you move a little closer to microphone?  
 16 A. Yes.  
 17 Q. And your microphone can move, too, if that's easier.  
 18 A. Okay. There we go.  
 19 Q. Perfect. And before your role in product support, did  
 20 you have any other positions at FICO?  
 21 A. I did. I was in the professional services group within  
 22 FICO.  
 23 Q. When did you start in the professional services group?  
 24 A. So I started there in 2003 until 2014, so that was about  
 25 eleven years.

1 the business logic, implementing it or configuring it within  
 2 Blaze Advisor and then get it running. So kind of -- I  
 3 guess maybe an analogy would help.  
 4 So if you have an iPhone, a brand-new iPhone, and  
 5 you, you know, get it home and you unplug it -- sorry -- you  
 6 plug it in and you get it started, there is a lot of things  
 7 that you would need to configure on the phone. Right? So  
 8 what ring tones you want and, you know, all of the -- what  
 9 mail you're going to get and all the apps that you want to  
 10 download and things like that.  
 11 So that's the same way Blaze Advisor is similar to  
 12 that. We would take it and work with you to find your  
 13 preferences and the logic that you want to put in it, and we  
 14 configure it within the system, if that helps.  
 15 Q. And when you left the group in 2014 to move into product  
 16 support, how many people were on the professional services  
 17 team at FICO?  
 18 A. We had about 80, 80 resources in the North American  
 19 group.  
 20 Q. And what activities -- can you identify the activities  
 21 in big buckets that the professional services group does  
 22 with respect to Blaze Advisor, in particular?  
 23 A. So I mentioned before, I would say in the sort of these  
 24 three big buckets that we did sort of consulting and then  
 25 the configuration, the implementation and really the

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1 Q. And we just talked about what the product support group  
 2 does. What does the professional services group do at FICO?  
 3 A. So the professional services group at FICO, I sort of  
 4 bucket it into three areas. So we provide consulting to our  
 5 customers. We provide kind of implementation or  
 6 configuration services for Blaze Advisor and for the  
 7 software, and then we provide mentoring around the software  
 8 as well.  
 9 Q. Implementation. What does implementation mean with  
 10 respect to the professional services group?  
 11 A. So with respect to the professional services group,  
 12 implementation would be really getting the software kind of  
 13 up and running. So it would be working with the customer to  
 14 take Blaze, which when it, when it is delivered from FICO,  
 15 it's not really ready to run. You can't just take it and  
 16 plug it in and run it. So it's the life cycle of taking  
 17 Blaze Advisor, configuring it and getting it up and running  
 18 at the customer site.  
 19 Q. And so the FICO professional services group people help  
 20 perform that function, correct?  
 21 A. Correct.  
 22 Q. And you just mentioned another software industry buzz  
 23 word. Configure. What does "configure" mean?  
 24 A. So configuration would be -- it's sort of part of the  
 25 broader implementation. So configuration would be taking

1 mentoring of a customer.  
 2 Q. And who receives these services? Who are you providing  
 3 them to?  
 4 A. So our licensed customers would typically ask for and  
 5 receive these services.  
 6 Q. Let's break down those three buckets and talk about each  
 7 of them generally.  
 8 A. Okay.  
 9 Q. Consulting. What types of consulting did the group  
 10 offer to Blaze Advisor customers?  
 11 A. So in consulting, we were really bringing our best  
 12 practices around the software. So we've obviously  
 13 implemented it many, many times with many customers. So our  
 14 knowledge around the best ways to take the software to use  
 15 it in a performant way, in a way that was -- you were  
 16 looking for it to be scaleable and adaptable and agile. So  
 17 a lot of those best practices are around those areas. We  
 18 provided a lot of that in the consulting aspect of it, how  
 19 you would implement a business rules management system  
 20 within your company, if you hadn't used one before.  
 21 Q. And next bucket, configuration. Can you explain what  
 22 are those services with respect to Blaze Advisor?  
 23 A. So configuration is really the, the, again, part of the  
 24 area where we take the software, we're going to work with  
 25 the customer to understand their business logic, and then

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1 the requirements that they wanted, what they wanted this to  
 2 look like, we really worked back and forth with how this was  
 3 going to implement and work with their system as well.  
 4 And then we go into the design of it. So we said,  
 5 okay, what would this look like with a tax return, do we  
 6 have the right data that we need, do we have all the logic,  
 7 is it written down, is it in the auditor's heads, you know,  
 8 where is it. So we gathered a lot of that and put that  
 9 together.  
 10 And then we worked with them to actually develop  
 11 the system, so worked through actually implementing again  
 12 the full Blaze Advisor, the full repository, all the rules,  
 13 working hand in hand with them and then training them at the  
 14 same time and mentoring them. And we deployed that out into  
 15 the IRS. And the result was that they actually were then  
 16 able to go through really all one million tax returns  
 17 within, you know, hours versus 1,000 with, you know, eight  
 18 people sitting around a desk for two weeks. So it was a  
 19 huge success story. It was really good.  
 20 Q. And how, how do customers get a copy of Blaze Advisor?  
 21 A. So we have a fulfillment website where customers  
 22 typically would log in and download the software.  
 23 Q. And once it's installed, can FICO turn off Blaze Advisor  
 24 at its customer site?  
 25 A. No, we don't really have an option to do that. The

1 likely take.  
 2 Q. Is a statement of work a license?  
 3 A. No, a statement of work is not a license. So typically  
 4 that would have been negotiated before I got involved. So  
 5 the license was -- or, rather, I'll say the professional  
 6 services statement of work would be an appendix to the  
 7 license.  
 8 Q. So it's a totally separate contract, correct?  
 9 A. Totally separate contracts, yes.  
 10 Q. And did you work on statements of work during your time  
 11 at FICO in the professional services group?  
 12 A. I did. I did. So I was for a period of time in charge  
 13 of, in charge of the Blaze group. So I would help negotiate  
 14 and understand what the customer was really looking for and  
 15 then write up the statements of work.  
 16 Q. And did you work on any of those statements of work  
 17 between FICO and Chubb & Son?  
 18 A. I did, yes.  
 19 Q. Do you know how many, how many of those statements of  
 20 work exist between Chubb & Son and FICO?  
 21 A. I did a count, and there were I believe 52 statements of  
 22 work.  
 23 Q. And have you personally reviewed all of those statements  
 24 of work?  
 25 A. I have.

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1 license is kind of on their premises. There is no way for  
 2 us to go in and turn it off. So it's not like a Cloud  
 3 account, like Spotify or Netflix or something, where we can  
 4 turn it off remotely.  
 5 Q. And let's drill down into the fun part, the contracts of  
 6 the professional services group. Can you pick up -- you've  
 7 got two big binders. Apologies, everyone. Pick up the  
 8 first one that starts with P212, in the first exhibit right  
 9 here.  
 10 A. This one here?  
 11 Q. Okay.  
 12 A. Oh, yeah. P212. Yes, sir.  
 13 Q. When you worked in the professional services group, were  
 14 you ever involved in documenting customer engagements?  
 15 A. I was. So I -- when I was in the professional services  
 16 group, I would document statements of work.  
 17 Q. And a statement of work, for someone who is not a lawyer  
 18 or who is not in the technical software industry, can you  
 19 tell me just at a top level what is a statement of work?  
 20 And then we will look at some.  
 21 A. Sure. Yeah. So a statement of work really just  
 22 describes what a customer has asked us to do for them. It  
 23 will run through what we're going to do, kind of the  
 24 deliverables that we will provide, and then usually the cost  
 25 and the -- excuse me -- and the number of hours that it will

1 Q. Based on your experience, do you recall generally what  
 2 type of services Chubb & Son requested from FICO?  
 3 A. Yes. So generally it followed a lot of ways I was  
 4 talking about earlier, so consulting, so the implementation,  
 5 that Four D approach that I talked about, training, there  
 6 was a number of trainings in there, and then that  
 7 mentorship, mentoring and guidance, yeah.  
 8 Q. Please turn to Exhibit 337 in your binder.  
 9 MS. KLIEBENSTEIN: AND, Your Honor, to my  
 10 knowledge, there is no objection to the exhibits we're going  
 11 to go through here.  
 12 THE COURT: Were you offering -- it hasn't been  
 13 displayed 212. Were you offering 212?  
 14 MS. KLIEBENSTEIN: Not yet.  
 15 THE COURT: Okay.  
 16 MS. KLIEBENSTEIN: Thank you.  
 17 BY MS. KLIEBENSTEIN:  
 18 Q. So Exhibit 337, do you recognize this exhibit, Mr. Ivey?  
 19 A. I do, yes. Yes.  
 20 Q. What is it?  
 21 A. So this is a statement of work dated the 12th of June,  
 22 2006.  
 23 Q. And, Mr. Mayleben, could you just show us the first page  
 24 there? Thank you.  
 25 So this is a statement of work contract. Can you

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1 walk us through, for somebody who has never seen this type  
 2 of document before, walk us through the different pages and  
 3 just generally what types of information is in these  
 4 contracts based on your experience working on them?  
 5 A. Sure. Yeah. So, generally, they would -- you have a  
 6 number of sections.  
 7 So the first section would be called the  
 8 Description of Services and would lay out, again, what we  
 9 were being asked to do and what we might be doing.  
 10 The second section would be the Deliverables, what  
 11 we're going to provide as a result of the statement of work.  
 12 And then Section 3 would describe what we aren't  
 13 going to do.  
 14 Four was kind of assumptions -- 4 and 5 were more  
 15 of the legalities.  
 16 And then 6 would cover kind of what we would be  
 17 paid and how many hours we would deliver, typically, unless  
 18 it was a fixed price and then --  
 19 Q. And then it would end with the parties' signatures,  
 20 correct?  
 21 A. Correct. Yes.  
 22 Q. Let's go back to the first page, if we could,  
 23 Mr. Mayleben.  
 24 Let's focus on the Description of Services. This  
 25 was something that Chubb & Son was asking FICO to do, right?

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1 A. That's correct.  
 2 Q. And can you tell me at a general level in this  
 3 Description of Services what was FICO being asked to do?  
 4 A. So at a very high level, this, this was work to  
 5 identify -- so maybe the first section of what we were  
 6 talking about with the definitions. So for this we were  
 7 being asked to -- actually, I can probably read the -- if I  
 8 look at the second paragraph, Fair Isaac will collaborate  
 9 with key client stakeholders to conduct a Blaze Advisor  
 10 project analysis for -- to perform discovery and analysis  
 11 activities for the pending renewal creation and  
 12 classification solution. So, in general, it was that first  
 13 part of gathering the requirements, what do you want to do,  
 14 how would the rule management kind of fit within that  
 15 contract.  
 16 Q. So to put this in the Four D frame work, what D are we  
 17 talking about?  
 18 A. The first definition phase.  
 19 Q. And what's the date on this contract?  
 20 A. The 12th of June, 2006.  
 21 Q. What were the fees for this particular statement of  
 22 work?  
 23 A. So I'll go back to Section 6, and in the first paragraph  
 24 the fees were a fixed price of \$30,000.  
 25 Q. Do you know how many people hours at the time that would

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1 have been?  
 2 A. It would have been roughly between 120 and 160 hours  
 3 depending on the -- what rate we used underneath the covers,  
 4 but generally it would have been about that.  
 5 Q. And how, how did you do that math?  
 6 A. So if I take -- so I know the rough rate that we would  
 7 typically charge a customer. So if I take 30,000 divided  
 8 by -- it was usually around 200, between 200 and \$250 an  
 9 hour, and so that would give you 120 hours or 160 hours.  
 10 Q. And going back to the first page down under 1(i), I  
 11 believe, if my eyes area correct, it says two deliverables.  
 12 Can you describe what those deliverables were to be in this  
 13 instance.  
 14 A. Yes. So it states that the first deliverable is,  
 15 "Pending Renewal Creation and Classification Solution Vision  
 16 document that outlines a baseline strategy and roadmap for  
 17 Blaze Advisor based Pending Renewal Creation and  
 18 Classification Solution."  
 19 And then the second deliverable would be a  
 20 "Conceptual Application Architecture Document that outlines  
 21 the various system components and infrastructure required to  
 22 implement the Pending Renewal Creation and Classification  
 23 Solution."  
 24 Q. Can we set that exhibit aside and move to Exhibit 870 in  
 25 your binder. And what is the date of this agreement?

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1 A. So this is a statement of work dated the 12th of June  
 2 2006.  
 3 Q. And at a high level, at a high level, what services are  
 4 being described in this statement of work?  
 5 A. So this statement of work is outlining -- it's a follow  
 6 on to that first statement of work, the pending renewal  
 7 creation and classification. And it's essentially stating,  
 8 and if I look down in sort of the first bullet under the  
 9 first paragraph, it's talking about how we would conduct an  
 10 analysis of what would this whole implementation look like,  
 11 how many hours would it take, what would need to happen.  
 12 Q. Implementation of what?  
 13 A. Of the pending renewal creation and classification  
 14 application.  
 15 Q. Implementation of Blaze Advisor into that application?  
 16 A. Apologies. Yes, yes.  
 17 Q. And what's involved in implementation again, just  
 18 briefly?  
 19 A. So the implementation would typically, again, cross that  
 20 Four D approach, the define, design, develop and deploy. So  
 21 it would provide some consultative hours up front. We would  
 22 go through gathering their business requirements around this  
 23 solution, all the way through developing it and deploying it  
 24 out into their system.  
 25 Q. And moving to Section 2, Deliverables.

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1 A. Okay.

2 Q. Can you tell me, what was the second deliverable

3 requested?

4 A. So the second deliverable under part (b) was a proposal

5 for a fixed price implementation of the remainder of the

6 application.

7 Q. And that was implementation by whom?

8 A. It was a proposal for a fixed price implementation by

9 FICO of the --

10 Q. And can we now move to Exhibit 341. What is the date on

11 this statement of work?

12 A. So this statement of work is dated August 11th, 2006.

13 Q. So it was a couple of months after the last two we

14 looked at, right?

15 A. Correct.

16 Q. And what services are outlined in this statement of

17 work?

18 A. So this statement of work outlines, is a follow on to

19 that last statement of work. So it actually looks like the

20 result of that statement of work where it's outlining what

21 we would do for a full implementation of this renewal

22 application.

23 Q. And implementation is that Four D approach that we just

24 discussed, right?

25 A. That's correct.

1 pending renewal solution. And it breaks down -- it has a

2 breakdown of the waves as described here. So there were

3 four waves, in which we would be implementing an increasing

4 amount of the specialty lines that were being asked for.

5 Q. And, Mr. Mayleben, if we could expand out. And then

6 halfway down it says, "the wave breakdown." Let's make that

7 bigger so everyone can read it.

8 You just briefly mentioned the wave breakdown.

9 What are you talking about?

10 A. Yeah. I think you have it up here. So the wave

11 breakdown -- and this would be consistent with our kind of

12 mentoring cardiologist model, which is -- so the first wave

13 defines that FICO will do kind of 100 percent of the work.

14 And then in Waves 2, 3 and 4, you can see that Chubb & Son

15 would have an increasing amount of work that they would do

16 as they learn and start to use the software and learn how to

17 go about the implementation.

18 Q. So let's set that project aside and move to Exhibit 346.

19 What is the date on this statement of work?

20 A. Actually just give me one second here. Here we go. So

21 the date on this statement of work is May 21st, 2007.

22 Q. And can you at a 10,000-foot level describe the services

23 requested in this statement of work?

24 A. Just give me one second to make sure I'm -- so,

25 generally, the service here, services here are doing a

561

563

1 Q. And can you turn to -- well, actually, let's stay on

2 this first one.

3 Under the Project Background, can you tell me what

4 was the turbo batch renewal application identified in the

5 Project Background?

6 A. Yeah. So if I look at the second paragraph in 1.1, "The

7 turbo batch renewal application is a custom business

8 software application currently in use at Chubb. The

9 application supports Chubb's underwriters and their

10 assistants at Chubb's renewal centers by classifying

11 specialty lines policies during Chubb's batch policy renewal

12 process. Generally described, the application is a batch

13 process that assesses specialty lines insurance policies

14 with pending renewals and categorizes them for treatment."

15 Q. And, Mr. Ivey, how many pages is this statement of work?

16 A. Ahh.

17 Q. I think the page numbers are in the upper right-hand

18 side.

19 A. I wanted to take the long way. 17 pages.

20 Q. Okay. Now moving back to the second page under

21 Section 1.2, can you generally describe what, what work is

22 requested in Section 1.2 from FICO?

23 A. So, generally, it's describing the implementation

24 project, how we would go about -- how we're going to go

25 about implementing this solution at the customer, the

1 validation of a solution, and it looks as though it's the

2 commercial underwriting workstation. So we were coming back

3 in and doing a high-level validation of their approach to

4 use a business rules management system for this commercial

5 underwriting workstation application.

6 Q. So the application that's involved is what again?

7 A. It's the commercial underwriting workstation

8 application.

9 Q. And you mentioned "validating." What is that? What

10 does that mean in your line of work?

11 A. So in our line of work, kind of back to that

12 cardiologist model where -- I believe we're being asked back

13 to kind of validate an approach that they have taken. So

14 they had learned how to go about an implementation, and they

15 were then going into another solution here, having us come

16 back and, as kind of the cardiologist, and say, hey, have we

17 done everything right, are we on the right path so that we

18 don't get too far down before we have mistakes and problems.

19 Q. And you just said they learned how to implement an

20 application. What are you referring to?

21 A. Sorry. So Chubb & Son would have learned through some

22 of the prior styles that we saw -- we would have worked with

23 them; and, again, when we talked about the waves in the last

24 SOW, so they would have been picking up how to go about an

25 implementation of a solution.



**632**

1 Chubb & Son, a division of Federal, provided the support  
 2 services using Blaze Advisor?  
 3 A. Before the acquisition, Chubb oral provided the services  
 4 for our products.  
 5 Q. Would you turn to page 24 of your 29 -- that same  
 6 deposition in 2019.  
 7 A. Page 24?  
 8 Q. Page 24, please.  
 9 A. Okay.  
 10 Q. And then if you look at line 15, and I asked this  
 11 question: "Okay. Before ACE American Insurance Company  
 12 provided support for Blaze Advisor applications, in  
 13 connection with the sale of insurance policies, do you agree  
 14 that Chubb & Son, a division of Federal, provided those,  
 15 provided that support using Blaze Advisor applications:  
 16 "Answer: That's correct."  
 17 A. Yes.  
 18 Q. Did I read that correctly?  
 19 A. Yes.  
 20 Q. And do you recall when all of the employees of Chubb &  
 21 Son and Federal became employees of ACE American?  
 22 A. It became Chubb after the merger.  
 23 Q. Let's stay on page 24. Would you look at line 10?  
 24 Question:  
 25 MS. GODESKY: Objection, Your Honor.

**633**

1 THE COURT: What's the objection, Counsel?  
 2 MS. GODESKY: I think the question was whether he  
 3 recalls, and the witness said he didn't. I don't think that  
 4 this is impeachment.  
 5 MR. HINDERAKER: No. He said before -- that is  
 6 not what he said.  
 7 THE COURT: Okay. Overruled. Hang on.  
 8 Overruled.  
 9 MR. HINDERAKER: Okay.  
 10 BY MR. HINDERAKER:  
 11 Q. So let's go to page 24, line 10.  
 12 A. Okay.  
 13 Q. Okay. Are you with me?  
 14 A. Yeah.  
 15 Q. All right. "And do you know when those employees who  
 16 were with Chubb & Son, a division of Federal, became  
 17 employees of ACE American Insurance Company?  
 18 "Answer: January 1st, 2017, two oh one seven."  
 19 Did I read that correctly?  
 20 A. Yes.  
 21 Q. Thank you.  
 22 Is it correct to say, Mr. Pandey, that from the  
 23 time ACE American Insurance Company supported the sale of  
 24 insurance with Blaze Advisor applications until all use of  
 25 Blaze Advisor stopped -- let me back up.

**634**

1 Do you know that as of today, 2023, Blaze Advisor  
 2 is not used in any insurance applications to sell insurance  
 3 by ACE American or anybody within the whole Chubb  
 4 organization?  
 5 A. All Chubb organization, yes.  
 6 Q. It's all stopped?  
 7 A. Yeah.  
 8 Q. We can say that as of today?  
 9 A. To the best of my knowledge, all stopped.  
 10 Q. All right. So with respect to -- then with respect to  
 11 the time period when ACE American was using Blaze Advisor in  
 12 applications to sell insurance, is it accurate to say that  
 13 ACE American was using Blaze Advisor in the same  
 14 applications connected to selling insurance that Chubb & Son  
 15 had used before?  
 16 A. No. The, we were selling -- can I answer this? Okay.  
 17 Q. All right. Let's go to page 52. And if you would go to  
 18 line 7, please, still in the 2019 deposition.  
 19 A. Page 20?  
 20 Q. Page 52, line 7, please.  
 21 And I ask the question: "And rather than go  
 22 through each one of those applications individually, would  
 23 it be accurate to say that ACE American Insurance Company  
 24 now supports all the applications that use Blaze Advisor  
 25 being the same applications that Chubb & Son, a division of

**635**

1 Federal, supported:  
 2 Answer: I'll say I'm fairly -- I'll say yes, but  
 3 to my knowledge, yes, but it could be other companies too."  
 4 And that was your answer?  
 5 A. Yeah.  
 6 Q. Thank you. Let me change topics. I want to ask about  
 7 the data centers and their location. All right?  
 8 A. Yeah.  
 9 Q. Whether it was Chubb & Son using Blaze Advisor or ACE  
 10 American using Blaze Advisor, the data center where Blaze  
 11 Advisor was hosted was located in Raleigh, North Carolina?  
 12 A. Yes.  
 13 Q. And when a Blaze Advisor application was run on that  
 14 server in North Carolina, then a copy of the Blaze Advisor  
 15 software was made into the random access memory of the  
 16 server, correct?  
 17 A. That's how the software work. It's the same computer.  
 18 Q. That's how the software works, correct?  
 19 A. Yeah.  
 20 Q. And then the applications that supported -- well, let me  
 21 back up.  
 22 Are you aware that Chubb Insurance Company of  
 23 Canada used Blaze Advisor in some applications connected to  
 24 selling insurance?  
 25 A. Yeah, Chubb Canada used Evolution.

**636****638**

1 Q. Evolution?

2 A. Yeah.

3 Q. At least that one?

4 A. Evolution that I know of.

5 Q. And Evolution, as used by Chubb Insurance Company of

6 Canada, that software was hosted on the servers in Raleigh,

7 North Carolina?

8 A. Yes. As a primary, so it really doesn't --

9 Q. Your lawyer will be able to ask you as many questions --

10 A. No. No. I was thinking technical, because that's my

11 field.

12 Q. All right. Fair enough.

13 Yeah. So perhaps the underwriter or whoever the

14 business user was was sitting in Toronto, but when that

15 Toronto or Canadian based person was running Evolution, for

16 example, it was accessing the software on the servers in

17 Raleigh, North Carolina, correct?

18 A. Yes.

19 Q. And that's the only location that Chubb & Son had data

20 centers in the United States?

21 A. No. That's what I was going --

22 Q. Oh, okay.

23 A. The way IT works is you have to have the primary data

24 center. Then you have to have the secondary data center in

25 case all go off or upgrade happens, those scenarios. So you

1 North Carolina, server that was activated?

2 A. Yes, that was primary, and in case of some problem, then

3 it go to the Canada data center.

4 Q. But only if there was a problem?

5 A. There are some maintenance routine also that could

6 happen, but not the normal case.

7 Q. So Raleigh, North Carolina, or else someplace in

8 Connecticut?

9 A. Yeah.

10 Q. Fair enough. It doesn't matter where. Okay?

11 A. It's called Rainsbury or Stansbury, one of the "bury"

12 the name of the town. I'm forgetting. Salisbury.

13 Q. When we were together before, you were educating me

14 about what an underwriter does, and you told me that --

15 Tell me if you agree with this. That the

16 underwriter is the salesperson for the insurance company?

17 A. Underwriting, your language, laymen language, think of

18 them as a salesman, but they are not salesman. They are

19 underwriters. They are not salesmen, but in your tone to

20 explain you, I use the word think of them as salesmen.

21 Q. Yes.

22 A. But they're not salesmen. They are underwriters.

23 Q. And the function of underwriting is to sell insurance.

24 Do you agree?

25 A. Underwrite the policy, so if a customer ask a quote --

**637****639**

1 always have primary and backup, so --

2 Q. Raleigh was the primary?

3 A. Yes.

4 Q. Where was the secondary?

5 A. So it was, in Connecticut, the other one, the secondary,

6 but for Canada, secondary was in Canada, Toronto.

7 Q. Okay. So Blaze Advisor was installed on servers in

8 Toronto, Canada, as a secondary backup?

9 A. No. It's primary in here in Raleigh.

10 Q. Yep.

11 A. And in Stansbury -- oh, not Stansbury. It is somebody

12 in data center in Connecticut. And that was the secondary

13 for us, but if disaster happens, let's say they have a

14 problem in the U.S., then we could deploy in Canada because

15 we had the data center which we didn't use at that time.

16 Q. Which you did or did not use?

17 A. Did not use at that time, but we had the data center in

18 Canada for other reasons.

19 Q. For other reasons like backup?

20 A. For other applications because Canada have some

21 application that is used only for Canada. So they had their

22 own data center.

23 Q. Okay. So let me just clarify this up. So for Blaze

24 Advisor software in Evolution, for example, when Evolution

25 was run, it was the application resident on the Raleigh,

1 Q. Mr. Pandey, let me just back up. We know what

2 underwriting is. "Size the policy. Quote the policy. Do

3 all that underwriting work, and the purpose of all that by

4 the underwriter is to sell the insurance company insurance

5 policy," correct?

6 A. Sell, you can say it, but sale is done by agents and

7 brokers. They sell it.

8 Q. The purpose of the underwriter after he does all that

9 work is to sell the insurance policy to the agent and broker

10 and the agent and broker's customer?

11 A. We create multiple options, and we create the different

12 limits, the deductibles, different color and say here's

13 three options. Here the limit, here the premium. Here the

14 limit, here the premium.

15 We create multiple options. That's what

16 underwriter does, and go to agent and say tell the customer

17 which one they like, so use the option.

18 Q. And then get the options and hopefully one of them is

19 accepted and an insurance policy is sold, correct?

20 A. Yes.

21 Q. Correct?

22 A. Once they accept, then the issuance and billing and

23 other process starts.

24 Q. All right. Let's change topics. In your binder you

25 will see a tab that's P0154. Let me know when you've found

**803**

1 Q. So I've handed you what has been marked as Exhibit 116.  
 2 Is this one of the documents you reviewed to prepare for  
 3 your deposition?  
 4 A. Yes.  
 5 Q. This is an e-mail from you to Russ Schreiber dated  
 6 November 26th, 2008, correct?  
 7 A. That's right.  
 8 Q. Having reviewed the document, do you recall what led to  
 9 you writing this e-mail?  
 10 A. It appears that it was a request from Russ Schreiber for  
 11 my views on the status of the ELA and whether it did include  
 12 a global provision or not.  
 13 Q. And do you recall actually having a conversation with  
 14 Russ Schreiber on that topic?  
 15 A. No, I don't have a recollection of that.  
 16 Q. You state that in reviewing your notes and some archived  
 17 e-mails, "It's apparent to me that the corporate ELA that  
 18 was negotiated with Phil Folz and June Drewey intended to  
 19 include the global license," correct?  
 20 A. That is what I stated.  
 21 Q. So you concluded after reviewing archived e-mails and  
 22 your notes that the ELA was a global license?  
 23 A. That's -- that I don't agree with necessarily. It says  
 24 that it's apparent that it intended to include the global  
 25 license, but I can't tell you specifically that it did.

**804**

1 Q. Okay. What is the distinction between what you're  
 2 saying and what I said?  
 3 A. Well, the way I worded it, it's apparent that it  
 4 intended to include the global license. The question is in  
 5 the final what was actually paid by Chubb would indicate  
 6 that there is a difference of about \$100,000, and I don't  
 7 see the wording, for example, changed from a definition of  
 8 territory. So there is some evidence that it did not  
 9 include -- that it was never finally accepted as global, but  
 10 I don't have the e-mail or any thread from Phil -- from Mark  
 11 Layden to indicate what was finally agreed on at that  
 12 private meeting that he attended, so I can't draw that  
 13 conclusion. It's apparent that they wanted global, but I  
 14 don't know if it ever came to fruition.  
 15 Q. So you just don't know --  
 16 COURT REPORTER: If it ever came to what?  
 17 THE WITNESS: Fruition.  
 18 BY MS. JANUS:  
 19 Q. But you believe that it was intended to include --  
 20 A. That's right.  
 21 Q. -- the ELA was intended to include the global license?  
 22 A. That is what I said.  
 23 Q. Do you know whether in fact after November of 2008 FICO  
 24 assisted Chubb in implementing the Blaze Advisor software in  
 25 Europe?

**805**

1 A. I don't believe that that was the way I read the e-mail  
 2 from the invitation of Mike Sawyer when he states that to --  
 3 license agreement and a plan for Chubb Europe, he's talking  
 4 about a sales opportunity.  
 5 Q. So you don't know whether FICO interpreted the  
 6 Enterprise License Agreement going forward as including  
 7 global access or not. You just don't know?  
 8 A. I don't know.  
 9 Q. What notes are you referring to in your e-mail marked as  
 10 116?  
 11 A. It would be the notes that -- the e-mails that you have  
 12 produced here clearly. Notes would have been perhaps  
 13 notebooks of -- as I attended meetings, I may have taken  
 14 notes at the meeting.  
 15 Q. So handwritten notes that you may have?  
 16 A. Handwritten notes, yes.  
 17 Q. Okay. And do you know where those handwritten notes are  
 18 today?  
 19 A. Thrown away years ago.  
 20 Q. Was that something that you took with you when you left  
 21 FICO?  
 22 A. The notebooks, yes.  
 23 Q. And do you know for a fact that you don't have those  
 24 anymore?  
 25 A. Yeah. We had a super storm, Sandy, and those notebooks

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1 were in the basement and are no longer available.  
 2 MS. JANUS: Those are all the questions I have for  
 3 you.  
 4 THE WITNESS: Thank you.  
 5 MS. JANUS: Thank you for your time today.  
 6 THE WITNESS: Thank you.  
 7 MR. HINDERAKER: I have a few questions for you.  
 8 Let me get my materials.  
 9 EXAMINATION  
 10 BY MR. HINDERAKER:  
 11 Q. Mr. Wachs, I'm going to give you a copy of Exhibit 143,  
 12 and you -- can you identify this as the RFI that was  
 13 received from Chubb & Son, a division of Federal insurance  
 14 company?  
 15 COURT REPORTER: You identified this as the what?  
 16 BY MR. HINDERAKER:  
 17 Q. Can you identify this as the RFI that was received from  
 18 Chubb & Son, a division of Federal Insurance Company,  
 19 regarding its interest in the Blaze Advisor software?  
 20 A. Yes, I can.  
 21 Q. Okay. And that is what it is?  
 22 A. That is what it is.  
 23 Q. Okay. I just -- you mentioned some of this in your  
 24 earlier testimony, I believe, but if you would go to page 5  
 25 of this exhibit. And you see in the third paragraph there

**807**

1 is a description of the Chubb & Son specialty insurance?  
 2 A. Yes, I do.  
 3 Q. All right. And referencing the relatively small number  
 4 of very large accounts, referencing the 1,000 employees that  
 5 we have seen in some of your e-mails, and then it has a  
 6 sentence, "The key strategic initiative in this area is  
 7 expanding and growing the business into mid-market and  
 8 smaller accounts." Do you see where I have read?  
 9 A. Yes.  
 10 Q. Did you learn anything more from Chubb & Sons regarding  
 11 that -- the nature of that key strategic initiative and your  
 12 response to the RFI?  
 13 A. Yes. They -- by expanding the marketplace to the small  
 14 and middle-sized accounts, they expected an order of  
 15 magnitude increase in the number of work items that they had  
 16 to review and underwrite, and they did not have the staff  
 17 and did not have the budget for the staff that would be  
 18 necessary in their current processing manner. And so they  
 19 were looking for an automated decision and management  
 20 software that would positively affect the scalability of  
 21 their business so that they could take on new revenue  
 22 streams.  
 23 Q. And by "scalability," that's a phrase you used earlier.  
 24 Would you tell us what that means?  
 25 A. To bring about -- for the use of automation to bring

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1 about productivity gains so that their investment in the  
 2 processing can be reduced and they would not have to hire  
 3 and train and manage additional staffing.  
 4 Q. Is scalability a way of saying the ability to handle  
 5 higher volumes of business?  
 6 A. Sure.  
 7 Q. And how did -- how did you present Blaze Advisor  
 8 software as meeting that key strategic initiative?  
 9 A. Decision management software in general and specifically  
 10 Blaze Advisor, as an industry leader, is able to process  
 11 large volumes of transactions, requests for decisions, rules  
 12 basis or -- can be greater than 25 to 50,000 rules making  
 13 decisions, and it can all be done in machine time. So they  
 14 are able to meet deadlines, take on new business and -- and  
 15 become a much more agile organization as they can very  
 16 easily do what I call what-if transactions where they can  
 17 run the book of business at certain rules and then modify  
 18 the rules and run the same book of business and see the  
 19 positive effect on their balance sheet and profit and loss  
 20 statements.  
 21 Q. You mentioned the what-if analysis earlier, and I  
 22 appreciate the description. How does that benefit -- how  
 23 does that benefit Chubb & Son?  
 24 A. They can make informed business decisions and they're no  
 25 longer trial and error. They're able to determine what

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1 level of investment and what marketplace to spend in, for  
 2 which gets the biggest bang for the buck.  
 3 Q. Does it have any impact on speed?  
 4 A. It's all about speed, not only speed of processing, but  
 5 there's the speed of examining the marketplace and being  
 6 able to change things quickly and interactively based upon a  
 7 sensing of what's going on in the marketplace.  
 8 Q. With that ability, can you get products to market  
 9 faster?  
 10 A. It's all about time to value, yes.  
 11 Q. And by "time to value," what do you mean by that?  
 12 A. Once there is a perceived need for modification of the  
 13 software, being able to set about to invoke a standard  
 14 development life cycle and get a product -- a change or a  
 15 new rules base or a new decision into production very  
 16 quickly.  
 17 Q. And how does that relate to or impact the ability of  
 18 Chubb & Son to have a new insurance product to market? You  
 19 can you answer my question, please.  
 20 A. Sure. You're able to modify the book of business on the  
 21 fly by business people rather than technologists. You don't  
 22 have to suffer the standard queue online waiting for the IT  
 23 folk to make changes, because the business people are able  
 24 to make their changes with the software in English language  
 25 without having to do coding. That enables them to change

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1 things, to run AB analysis examining different groups,  
 2 changing the rules, and they can -- seeing the results of  
 3 those rules. It positively affects the business.  
 4 Q. If you turn to page 6 of the RFI, and you see it lists  
 5 out the current CSI business goals and then it has four  
 6 bullet points. Can you tell us more from -- did you learn  
 7 more from Chubb & Son with respect to those business goals?  
 8 A. As a result of our discovery effort, are you saying?  
 9 Q. Yes, as a result of your working with Chubb & Son.  
 10 A. I believe that they well stated their business goals,  
 11 they understood their business well.  
 12 Q. Okay. Good. Then on page 7 of the RFI, they describe  
 13 their current state of renewal processing. If you would  
 14 review that for a moment.  
 15 And my question is going to be to you on your  
 16 discussions and -- from your discussions with Chubb & Son,  
 17 what changes to their current state were they seeking to  
 18 achieve through the technology of Blaze Advisor?  
 19 A. Well, there were a number of different changes. For one  
 20 thing, they ran their policy -- the policy is up for renewal  
 21 on a monthly basis in -- in the current state of the world.  
 22 They were looking to do that with much more -- the cycle  
 23 time could be reduced greatly, they could run them daily,  
 24 or, more importantly, they could be run by the business unit  
 25 rather than waiting for a technologist to run those cycles

**811****813**

1 so that they can make adjustments to the extent that you can  
2 change a policy rating more interactively, you can derive a  
3 greater profitability because of the period of time that you  
4 are now able to -- a variation in price rather than go with  
5 the standard pricing, so you created a value in your actual  
6 premium revenues.

7 The ability to -- they talk about Section 1 rules  
8 within their specialty renewal business. They can vary the  
9 attributes of the claims, of the -- I'm sorry -- of the  
10 limits and the deductibles and the term length in various  
11 ways and be able to penetrate and make changes that create a  
12 better reward-risk ratio and thus greater revenue  
13 profitability.

14 Q. And if we go to page 11 of the RFI, there is a heading  
15 at the bottom of the page, "Renewal processing: Future  
16 state."

17 A. Yes.

18 Q. And they -- Chubb & Son in the RFI says, "The goal of  
19 this project is to create an application and architecture to  
20 allow for a streamlined rules" --

21 COURT REPORTER: To what?

22 BY MR. HINDERAKER:

23 Q. -- 'to allow for a streamlined rules-based renewal  
24 processing engine."

25 It goes on to say, "An additional goal is to build

1 Exhibit 105, please. Well, rather than search around, here  
2 is another copy of it.

3 You were asked about Exhibit 105 earlier today,  
4 and this is an another copy of Exhibit 105. And I guess my  
5 question to you about this, about this Exhibit 105 -- I  
6 guess first we should establish that you are the author of  
7 the content?

8 A. I am.

9 Q. And with respect to FICO's response to Chubb & Son's  
10 RFI, is Exhibit 105 a fair summary of the response?

11 A. Of whose response?

12 Q. Of FICO's response to the RFI.

13 A. In broadly general terms, yes.

14 Q. So as we saw, the RFI is dated early February 2006.

15 Your e-mail, Exhibit 105, is February 22, 2006. In those  
16 discussions that you had with Chubb & Son, either weekly or  
17 every ten days that you mentioned, what was the subject  
18 matter of those discussions as you moved the process forward  
19 before the license agreement was signed?

20 A. Typically, those conversations had to do with the  
21 creation of a proof of concept that would enable us to  
22 remove any doubt that we had the superior product. While  
23 there were other rules management systems on the market, it  
24 was incumbent on FICO at the time to be able to show that  
25 rules could be created faster, that they could be executed

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1 the foundation for a future state architecture for  
2 rules-based processing that can be applied to new projects  
3 as we seek to improve the efficiency of our  
4 business-processing environment."

5 A. A key architectural element of a rules-based product  
6 like Blaze Advisor is that the rules are separated from the  
7 likes and stored in a nonredundant central mass database;  
8 therefore, as new products get created, you can now utilize  
9 the rules that are sitting in this database for your  
10 application without having to continually rewrite those  
11 rules and then also to conform that a single rules change,  
12 like an interest rate, for example, or risk factor in  
13 changing it in one place, in one rule, can then affect all  
14 of the applications that are drawing on that one rule  
15 change. So your ability to come to market with new products  
16 in a new architecture is greatly enhanced.

17 Q. Is that an element -- is that a matter of speed again?

18 A. Certainly speed is a key consideration.

19 Q. What other considerations go into that?

20 A. Uniformity, auditability, the ability for a business to  
21 consistently apply rules for the ability of people to  
22 understand the rules that are firing and the decisions that  
23 are being made. And that's key in customer service. It's  
24 key in business to be able to accept or reject business.

25 Q. Would you -- thank you. Would you look and find

1 faster, that they could be managed easier and by business  
2 people.

3 And each one of those attributes of the product  
4 needed to be proved to the client, and so we would create  
5 code, show examples of what we did, and define the scope --  
6 understand their rationale and how they create their rules  
7 and how they would create them in the new existence and new  
8 product. And then it was a question of refining their scope  
9 so that we can give accurate pricing --

10 Q. Okay.

11 A. -- for both the product as well as the professional  
12 services engagement.

13 Q. All right. So let me move the process forward a little  
14 bit to after the license agreement is signed in June of  
15 2006. Is there a next phase that might be called client  
16 acceptance or client testing? What was the next phase?

17 A. Well, as the license agreement is executed and then the  
18 master services agreement was executed, it was necessary for  
19 us to craft the actual product and the way it worked within  
20 their environment. That required our technical people to  
21 begin to code, to begin to draft a bespoke version of the  
22 software that made sense to the application it was being  
23 written for. Like any other application development  
24 project, you have to follow a certain structured development  
25 life cycle.



**815****817**

1 Once the units -- and I call them units. I call  
 2 them building blocks. Once those building blocks are  
 3 created, you unit test each of those building blocks, and  
 4 then you start to glue those building blocks together to  
 5 perform a more fully functional product, which then can be,  
 6 again, tested by the users in the form of acceptance testing  
 7 or full quality control to make sure that if I run this  
 8 business in the as-is state and then I run it again in the  
 9 future state, I'm going to get the same results or that I am  
 10 going to accept the changes because that was designed that  
 11 way.

12 So what I'm saying is, you have to quality control  
 13 your product acceptance, and that was conditional, and  
 14 anybody that is buying a professional services engagement  
 15 has to be able to finally accept the work product  
 16 deliverable. And those are steps -- were key steps in the  
 17 process.

18 Q. And were you involved in that process with Chubb & Son?

19 A. Yes, I attended the status meeting.

20 Q. Okay. And were you in meetings where either the  
 21 business people or the IT people of Chubb commented upon the  
 22 performance of the software in that context of the  
 23 acceptance testing?

24 A. One of those folks -- and this is told to me by, I  
 25 believe, Sully -- was so impressed, he said that I just did

1 to know, but would you just give us a general description of  
 2 what this document was intended to say and teach?  
 3 A. It was a full, if you will, client journey document here  
 4 which described the business need, the intended solution,  
 5 how we built the solution, and the results of the  
 6 implementation.

7 Q. Okay. And is this fair to say that this summarizes your  
 8 firsthand experience in that process of selling to Chubb?

9 A. Certainly.

10 Q. Maybe just a couple more questions about this. If you  
 11 go to the page that is 5877 where it says, "Chubb specialty  
 12 insurance business" and has the bullet points.

13 A. Yes.

14 Q. What, what was the source of this information that's on  
 15 this letter?

16 A. Interestingly, the bullet that talks about 3.5 billion  
 17 comes from the RFI from Chubb.

18 Q. Mm-hmm (Yes).

19 A. 1,000 employees comes from the RFI. 100,000 policies  
 20 written comes from RFI. And the enterprise-wide premium  
 21 revenue comes from the earlier intent -- or I should say a  
 22 summary intent to talk about what would have come from the  
 23 annual report.

24 Q. Okay. And then on the next page, which is 5878, same  
 25 question: What was the source of your understanding of the

**816****818**

1 in one afternoon myself, utilizing the Blaze Advisor  
 2 software, something that would have taken months and  
 3 hundreds of thousands of dollars of budget for that same  
 4 process to be done by IT. This product implementation has  
 5 basically paid for itself on the first time we ran it.

6 Q. And that was from Sully?

7 A. Yes.

8 Q. Okay. And then did any of the business -- did any of  
 9 the business people of Chubb & Son comment on how the use of  
 10 the product, that is, Blaze Advisor, would be able to assist  
 11 them in growing their revenue, moving into the mid-market?

12 A. Only that within the first full year they did succeed in  
 13 accepting considerably more business than they had in the  
 14 previous year for no increase in staff.

15 Q. This was identified in an earlier deposition as  
 16 Exhibit 330, dated November 3, 2006. Placing a time, it's  
 17 after the June license agreement. It's after the divisional  
 18 and it's before the second amendment.

19 Do you know who prepared Exhibit 330?

20 A. I did.

21 Q. And what was the purposes of Exhibit 330?

22 A. Sales training within FICO.

23 Q. So internal, internal to FICO?

24 A. Yes.

25 Q. Okay. And I think maybe the title tells us what we need

1 Chubb current state?

2 A. Initially, in that first response, it was the RFI, and  
 3 it was refined through subsequent weekly conversations with  
 4 the technology team headed by Sully.

5 Q. And then on the next page, 5879, you lay out the vision  
 6 statement and then you lay out success criteria. Do you  
 7 know if the success -- do you know if the success criteria  
 8 were met?

9 A. I do know that they automated their renewals --

10 Q. Mm-hmm.

11 A. -- in short order. I do know that from the testimony of  
 12 the business people that they did -- they were able to  
 13 access and modify the rules; and through the analysis tools  
 14 of the Blaze Advisor product, they would be able to know  
 15 which rules are the best rules and which rules are the worst  
 16 rules and, in effect, modify them accordingly.

17 THE COURT: All right. Members of the Jury, we're  
 18 going to take our break now. And I have a matter that I and  
 19 the lawyers need to take up during the break, so why don't  
 20 you plan to be back in the courtroom at 1:35 on that clock.  
 21 Okay?

22 THE CLERK: All rise for the jury.  
 23 (Jury exits.)  
 24

25 (In open court without the Jury present.)



**819****821**

1 THE COURT: All right. Go ahead and be seated.  
 2 We're going to take about a ten-minute break here,  
 3 and then I will come back up and give you my ruling on the  
 4 various issues that have been briefed over the last couple  
 5 of days. Okay? Be back here about 12:00 or shortly  
 6 thereafter.  
 7 (Recess taken.)  
 8  
 9 (In open court without the Jury present.)  
 10 THE COURT: All right. Let's go on the record.  
 11 All right. We're here in the courtroom outside  
 12 the presence of the jury. I'm going to give the Court's  
 13 ruling on the various cross motions for exclusion of  
 14 evidence of -- defendants' motion to exclude evidence of  
 15 settlement agreements that FICO has achieved with other  
 16 Blaze Advisor licensees, and those are basically Dockets  
 17 Numbers 1086, 1094 and 1103, and FICO's motion to exclude  
 18 evidence of perpetual licenses between FICO and other Blaze  
 19 Advisor licensees. Those are Dockets 1097, 1098, 1101, and  
 20 I believe either 1103 or 1106 from this morning -- 1106 from  
 21 last night, rather.  
 22 In order to give context to my ruling and further  
 23 guidance, I will give the parties -- I'm going to start with  
 24 the legal rule as it relates to actual damages in this case.  
 25 Judge Wright has found and neither party

1 would cite the parties to Safka Holdings at 42 F.Supp.3d  
 2 488, pin cite 493.  
 3 I would also virtually cite all of the cases cited  
 4 by the parties in their various filings on this issue,  
 5 including Gaylord, M2M Solutions, Audio MPEG and Utah  
 6 Medical. Simply stated, the admission of other license  
 7 agreements is as a general proposition well accepted.  
 8 In addition, each party, and/or their experts as  
 9 appropriate, may introduce evidence of the kinds of  
 10 considerations that would factor into such a hypothetical  
 11 negotiation based on their knowledge and experience.  
 12 Finally, it is equally clear that neither party  
 13 can put in evidence, nor have their lawyers argue: This is  
 14 what I would have charged or what I would have paid for such  
 15 a license. With those rules in mind, let me turn to the  
 16 specific issues before the Court.  
 17 As to the settlement agreements between FICO and  
 18 third parties, they are inadmissible. Third-party licenses  
 19 are admissible to show the value of a license, but in the  
 20 context of a settlement agreement, Rule 408 makes it clear  
 21 that the agreement is inadmissible to prove the value of the  
 22 claim, that is in that circumstance the license, since the  
 23 offer may be motivated by a desire for peace, and those  
 24 settlement agreements are therefore inadmissible. They're  
 25 irrelevant as well as prejudicial because they may

**820****822**

1 challenges that the measure of actual damages in this case  
 2 is both for the alleged infringement and the alleged breach  
 3 of contract, that that measure is the market value of the  
 4 license fee for the infringing use. This is found by  
 5 applying an objective standard using the paradigm of a  
 6 hypothetical negotiation between a willing seller and a  
 7 willing buyer.  
 8 As described by the Second Circuit in the On Davis  
 9 case, which appears to be the seminal decision in this area,  
 10 and it is the one on which Judge Wright relied most heavily,  
 11 and here I'm going to fully quote the relevant language from  
 12 that case.  
 13 "The reasonable license fee on which a willing  
 14 buyer and a willing seller would have agreed for the use  
 15 taken by the infringer," and again I'm going to emphasize  
 16 that last seven words of that test, "for the use taken by  
 17 the infringer," which is quoted at 246 F.3d at 167.  
 18 It is clear to this Court from On Davis and the  
 19 cases following it, as well as the somewhat, somewhat  
 20 analogous patent infringement context, that improving this  
 21 reasonable license fee that results from the hypothetical  
 22 negotiation, the jury may hear evidence that includes -- and  
 23 here I'm quoting from Safka, "expert testimony, prior sales  
 24 history and evidence of sales of comparable assets," which  
 25 is to say other reasonably similar license agreements, and I

1 improperly suggest to the jury the value of a claim.  
 2 And courts have routinely excluded such agreements  
 3 to settle that involved licenses like these, and I would  
 4 cite the parties to, among other things, LaserDynamics and  
 5 Uniloc. So based on that, the following exhibits are  
 6 excluded, and these are all plaintiff numbers.  
 7 So P424, 425, 430, 437, 439, 803, 810 and 812. I  
 8 am reserving ruling on two exhibits that have been  
 9 identified, P427 and P767. These agreements do not on their  
 10 face indicate that they are settlements, and if FICO can lay  
 11 proper foundation that they were the result of an arm's  
 12 length negotiation that occurred not under the threat of a  
 13 claim of breach or infringement, they are admissible.  
 14 Turning now to the admissibility of the  
 15 third-party perpetual licenses involving FICO, FICO argues  
 16 that because they are perpetual initial licenses, they are  
 17 not economically comparable to the hypothetical license at  
 18 issue here, and therefore they must also be excluded.  
 19 I agree with FICO that third-party licenses may  
 20 only be admitted after a threshold showing that they are  
 21 sufficiently comparable. From the cases the parties have  
 22 cited, however, that level of comparability is not a high  
 23 bar. It is not by any means the same as substantially  
 24 similar.  
 25 Many of the cases are cited from the patent

**907****909**

1 client partners.  
 2 Q. And Mr. Sawyer writes in the next sentence, "They,"  
 3 meaning Chubb, "do have a global ELA for Blaze and have an  
 4 automated UW," meaning underwriting, "application running in  
 5 the UK already."  
 6 Do you see that?  
 7 A. I see that line, yes.  
 8 Q. So this email shows that FICO through its Chubb client  
 9 partner, Mr. Mike Sawyer, was aware as of 2012 that Blaze  
 10 was up and running in Chubb Europe, correct?  
 11 A. I don't, I don't know if I would agree with that.  
 12 Q. But that's what it suggests, right, Mr. Carretta?  
 13 A. Well, it says what it says.  
 14 Q. And you're not aware of anyone at FICO ever suggesting  
 15 to Chubb or even suggesting internally that use of Blaze in  
 16 Chubb Europe was a material breach of the contract at any  
 17 time before 2016 when you sent this letter, correct?  
 18 A. I believe that's correct.  
 19 Q. I want to look at one more document that's also already  
 20 in evidence. P60. This is an April 1st, 2015, email from  
 21 Oliver Clark at FICO to Richard Lagerweij at FICO titled  
 22 "Decision Simulator Proposal."  
 23 Do you see that?  
 24 A. I do.  
 25 Q. And this is forwarding a message that a Mr. Moffat at

1 A. Yeah, what's that it says.  
 2 Q. And that's a statement, just so everyone is clear, from  
 3 FICO, not Chubb, right?  
 4 A. That is from Andy Moffat, who is a senior account  
 5 executive. That's right.  
 6 Q. At FICO?  
 7 A. At FICO.  
 8 Q. And that was made in April 2015 about a year before you  
 9 wrote that letter saying that there had been a material  
 10 breach you just learned about because there was improper use  
 11 of Blaze in Europe, correct?  
 12 A. That's what they're referring to, yes.  
 13 Q. And you didn't speak to Mr. Moffat or review any of his  
 14 communications with Chubb before you sent that letter,  
 15 right?  
 16 A. No, I did not.  
 17 Q. And in fact the first time you saw this communication,  
 18 blessing the use of Blaze in Europe, was at your deposition  
 19 in this case when you were showed it by one of the Chubb  
 20 lawyers, correct?  
 21 A. The outside lawyers, yes. That's correct.  
 22 Q. Okay. Thank you, Vanessa. We can take that down.  
 23 You also spoke on direct examination about how  
 24 your termination letter refers to allegedly unauthorized use  
 25 of Blaze by outside consultants, correct?

**908****910**

1 FICO had sent to Hamish Tonkin at Chubb earlier that day,  
 2 correct?  
 3 A. I think I'd have to do the timing math because I think  
 4 Andrew was -- yeah, he is a London guy. So I don't know if  
 5 that's correct or not. You just have to sort out the  
 6 timing. It looks like it.  
 7 Q. Well, the email from Mr. Moffat is at the bottom of the  
 8 chain and then it gets forwarded, right, later in the day?  
 9 A. That's what it looks like, yeah.  
 10 Q. And Mr. Moffat, according to this document, is a senior  
 11 account executive at FICO, right?  
 12 A. That's right.  
 13 Q. And his address is listed as London.  
 14 A. That's right.  
 15 Q. And if you look at the email about towards the bottom of  
 16 the page, he says, "Hi, Hamish."  
 17 Do you see that?  
 18 A. I do.  
 19 Q. And he says, "Please see the attached proposal for the  
 20 licensing costs and associated training for decision  
 21 simulator. The prices are heavily discounted in line with  
 22 the existing Blaze contract. No additional Blaze licenses  
 23 are needed as it is covered within the overall global Blaze  
 24 ELA."  
 25 Do you see that?

1 A. That's correct.  
 2 Q. And was that a reference to these companies DWS and  
 3 AppCentrica?  
 4 A. Yes.  
 5 Q. Now as a general matter, Mr. Carretta, FICO does agree  
 6 in certain circumstances to let its customers share Blaze  
 7 with consultants, correct?  
 8 A. Every deal is different, so it sort of depends.  
 9 Q. But in your decade plus at the company, you have seen  
 10 circumstances where they agree to that, correct?  
 11 A. Yes.  
 12 Q. And there's no categorical rule at FICO, we never let  
 13 our customers share Blaze with their consultants?  
 14 A. Like I said, every deal is negotiated.  
 15 Q. But there's no categorical rule, correct?  
 16 A. I wouldn't phrase it that way. It's dependent on the  
 17 whole deal, and therefore it may or may not be.  
 18 Q. Okay. Now, again, you became aware of these issues  
 19 involving DWS and AppCentrica because after you heard about  
 20 the ACE acquisition, you asked folks to start reviewing  
 21 FICO's maintenance logs to see if they could see any  
 22 problems related to Chubb, right?  
 23 A. Yes.  
 24 Q. And you were doing this because you wanted to find a  
 25 problem, right?

**911****913**

1 A. We began to become curious about who was using the  
2 software.  
3 Q. And in the regular course of business, Mr. Carretta, you  
4 don't usually scan maintenance logs for potential problems  
5 with your customers, right?  
6 A. I don't.  
7 Q. And you don't direct people to do that either, right?  
8 A. I don't direct people to do that.  
9 Q. And it would have been helpful for you in this time  
10 period, after the ACE acquisition was announced, if you  
11 could find more potential problems with Chubb's use of  
12 Blaze, correct?  
13 A. Not necessarily, no.  
14 Q. But it might give you more potential leverage in any  
15 breach letters that you might want to send or conversations  
16 that you want to have with Chubb, correct?  
17 A. Not necessarily.  
18 Q. But you did end up citing the use of Blaze by these  
19 consultants, just like you cited use of Blaze in Europe, in  
20 your termination letter, correct?  
21 A. I reference it in my termination letter. That's  
22 correct.  
23 Q. You referred to them as material breaches.  
24 A. Yes.  
25 Q. And based on those material breaches, you said that the

1 Q. But my question is whether you did anything to  
2 investigate the magnitude of this issue.  
3 A. No, because of what I just said. It's an absolute, you  
4 are not allowed to do this.  
5 Q. And did you ever identify any evidence that AppCentrica  
6 or DWS accessed Blaze for any purpose other than assisting  
7 Chubb in its work on one of its internal computer  
8 applications?  
9 A. I don't know what they did. I don't remember.  
10 Q. So you have not identified any evidence that AppCentrica  
11 or DWS accessed Blaze for any purpose other than assisting  
12 Chubb, correct?  
13 A. The only thing I know is that they showed up in the  
14 maintenance logs. I was told that. But I don't remember  
15 any of the details that you are asking about.  
16 Q. Okay. So I'm going to ask my question one more time.  
17 You have no evidence that AppCentrica or DWS accessed Blaze  
18 for any purpose other than to assist Chubb in its computer  
19 application work, correct?  
20 A. I just told you I don't remember. I don't believe I was  
21 told that.  
22 Q. So that's a no. You don't have any evidence?  
23 A. I don't personally have any evidence, no.  
24 Q. And are you aware of any evidence that anyone at  
25 AppCentrica or DWS shared Blaze with any third party outside

**912****914**

1 next day the contract was over and Chubb couldn't use Blaze  
2 anymore.  
3 A. Among the other breach, the obvious one we spent all day  
4 talking about.  
5 Q. Did you do anything to investigate the full extent of  
6 the use, like how many people at AppCentrica or DWS had laid  
7 eyes on the Blaze software?  
8 A. I did not personally, no.  
9 Q. Any use of Blaze in connection with this potential  
10 project in Australia would have been quite small in the  
11 context of an enterprise-wide license like Chubb had,  
12 correct?  
13 A. I don't know that.  
14 Q. Well, an enterprise-wide license means that you can use  
15 the software in an unlimited number of applications, right?  
16 A. I thought it was limited to the number of applications.  
17 I'd have to look at the agreement to see how they defined it  
18 again.  
19 Q. So you can't -- you can't speak at all to the relative  
20 impact of this issue with DWS and AppCentrica relative to  
21 the size of Chubb's use of Blaze and the scope of its  
22 license?  
23 A. Well, it's more of an absolute. We don't guess that,  
24 oh, this one is important. It was just two guys that looked  
25 at it, versus Accenture.

1 Chubb?  
2 A. I don't know. I just know that third parties accessed  
3 the software.  
4 Q. So that's a no.  
5 A. They are there in the log.  
6 Q. So that's a no.  
7 A. No. That's just what I said.  
8 Q. Mr. Carretta, I'm entitled to an answer to the question  
9 I'm asking. Are you aware of any evidence that anyone at  
10 AppCentrica or DWS shared Blaze with any third party outside  
11 Chubb?  
12 A. Not that I'm aware of, other than that they appear in  
13 the logs.  
14 Q. Okay. Let's talk about Section 10.8 and this whole  
15 concept of assignment.  
16 A. Okay.  
17 Q. During your direct examination, when you were talking  
18 about that letter you sent to Chubb on January 27th, 2016,  
19 you made a point of saying in your questioning with  
20 Mr. Hinderaker that Chubb had not responded to Sawyer and  
21 Schreiber at that point in time.  
22 Do you remember that?  
23 A. Yes.  
24 Q. I want to take a look at P131, which is already in  
25 evidence. And I want to go to page 3 of the PDF.

**915**

1 A. I'm looking at the screen now, yes.  
 2 Q. Okay. Perfect. So this starts with an email from Mike  
 3 Sawyer to someone at Chubb on January 8th, 2016. Do you see  
 4 that?  
 5 A. Yes.  
 6 Q. And he says, "Hi, Elie. Happy new year! I am following  
 7 up on the voicemail I left you before the holiday."  
 8 Do you see that?  
 9 A. I do.  
 10 Q. And then he says, "Can you get back to me about the ACE  
 11 acquisition?"  
 12 A. Yes.  
 13 Q. And then if you go to the second page of the PDF,  
 14 there's another email from Mr. Sawyer to Mr. Merheb at Chubb  
 15 the same day, about three hours later. Do you see that?  
 16 A. Where in this cycle of all these emails are you?  
 17 Q. Sure. I'm on the email from Mike Sawyer --  
 18 A. Yes.  
 19 Q. -- to Chubb at January 8th at 3:25 p.m.  
 20 A. I see that.  
 21 Q. And Mr. Sawyer says, "Elie. Thanks for the call this  
 22 afternoon. As discussed attached are Chubb's Blaze Advisor  
 23 license agreements for your review." Do you see that?  
 24 A. I do.  
 25 Q. So this looks like Mr. Merheb at Chubb called Mr. Sawyer

**916**

1 at FICO the afternoon that Mr. Sawyer emailed him, correct?  
 2 A. Yes.  
 3 Q. And this was January 8th, 2016, a couple weeks before  
 4 you sent that letter alleging breach, correct?  
 5 A. That is correct.  
 6 Q. Now if we could go to Joint Exhibit 1, which is the  
 7 license agreement, I'd like to take a look at the text of  
 8 Section 10.8, which is on page 8.  
 9 So, Mr. Carretta, there's a few sentences in  
 10 Section 10.8, correct?  
 11 A. Yes.  
 12 Q. And during your direct examination with Mr. Hinderaker,  
 13 you distinguished between the first and the second sentence  
 14 of Section 10.8 several times, correct?  
 15 A. They're independent, yes. That's correct.  
 16 Q. And you walked us through how certain things in your  
 17 breach letter related to the first sentence and how certain  
 18 things in your breach letter related to the second sentence.  
 19 Do you remember that?  
 20 A. Yes.  
 21 Q. Now it's true that FICO will sometimes enter license  
 22 agreements that don't have the second sentence that we see  
 23 in the Chubb agreement, right? Sometimes FICO enters  
 24 license agreements that have assignment clauses without  
 25 specific references to mergers and acquisitions, correct?

**917**

1 A. Like I said, they're all negotiated, so I'm sure there  
 2 are some that don't have that, but I am sure there are some  
 3 that do.  
 4 Q. So you are sure that there are some that do not have  
 5 this second sentence that specifically references mergers  
 6 and acquisitions?  
 7 A. Well, this particular sentence has a, an edit added on  
 8 to the end that was unique to Chubb. The other, the rest of  
 9 the sentence starting with "in the event" and ending with  
 10 "provide such consent" is standard template language.  
 11 Q. Okay. I want to, if we could show Mr. Carretta, and not  
 12 yet publish to the jury, Exhibit D304.  
 13 This is in your binder, but we will put it on the  
 14 screen too, Vanessa. I think the judge has turned it off  
 15 for the jury.  
 16 A. Okay.  
 17 Q. This is a software license agreement between FICO and  
 18 Grange Insurance Group, correct?  
 19 A. That's what's in the header, yes. That is correct.  
 20 Q. And if you turn to page 15 you can see signatures from  
 21 FICO and Grange Insurance going off those --  
 22 THE JURY: Your Honor, we don't have the --  
 23 THE COURT: Did you just say that your monitors  
 24 are off?  
 25 THE JURY: Yes.

**918**

1 THE COURT: That's actually on purpose at this  
 2 time because the exhibit is not yet into evidence.  
 3 THE JURY: Oh, I'm sorry.  
 4 THE COURT: Quite all right. I'm glad you asked.  
 5 THE WITNESS: It's back on my screen.  
 6 BY MS. GODESKY:  
 7 Q. Okay. Terrific. So on page 15 you can see that this  
 8 was signed by FICO and Grange Insurance, correct?  
 9 A. That is correct.  
 10 MS. GODESKY: Okay. Defendants offer Exhibit 304  
 11 into evidence D304.  
 12 MR. HINDERAKER: We just maintain our earlier  
 13 position, Your Honor.  
 14 THE COURT: Overruled. The exhibit is admitted.  
 15 BY MS. GODESKY:  
 16 Q. And so then if we could publish the document to the jury  
 17 and go to page 13, there's an assignment clause.  
 18 If you could make that bigger Vanessa. Thank you.  
 19 So, Mr. Carretta, this section reads, "Neither  
 20 party shall have the right to assign this agreement without  
 21 the prior written consent of the other party."  
 22 Your Honor, I think there's a --  
 23 THE COURT: Oh, thank you.  
 24 MS. GODESKY: Thank you.  
 25

**939****941**

1 entered into?  
 2 A. That's correct.  
 3 Q. Let me not hit this mic again.  
 4 Let's go to -- you were asked some questions about  
 5 your termination letter, 103. Plaintiff's Exhibit 0103.  
 6 And keep the license agreement nearby as well. In fact --  
 7 A. Okay.  
 8 Q. -- on a reference, your termination letter, because in  
 9 the termination letter you speak of the two applications  
 10 outside the United States and then in Canada. I guess  
 11 three?  
 12 A. Yes.  
 13 Q. Would you go to the license agreement J001?  
 14 A. Okay.  
 15 Q. And if we could go to the seventh page, please.  
 16 A. Okay.  
 17 Q. The license agreement does include a provision 10.5 that  
 18 says Entire Agreement?  
 19 A. That is correct.  
 20 Q. It says it supercedes all prior or contemporaneous  
 21 proposals, and all other oral or written understandings,  
 22 representations, conditions and other communications between  
 23 the parties.  
 24 Agreed?  
 25 A. Agreed.

1 authority under that written policy to enter into agreements  
 2 on behalf of FICO?  
 3 MS. GODESKY: Objection.  
 4 THE COURT: Overruled.  
 5 THE WITNESS: No, they do not.  
 6 BY MR. HINDERAKER:  
 7 Q. You were asked some questions about consultants, third  
 8 party. And you made the statement that the, the prohibition  
 9 is absolute. The magnitude does not matter.  
 10 What did you mean by that?  
 11 A. Essentially the slightest infraction is a breach. That  
 12 it effectively defines materiality. Lawyers sometimes call  
 13 it strict liability.  
 14 Q. Okay. Let's go to the license agreement again and  
 15 paragraph 3.6.  
 16 A. Okay.  
 17 Q. Why don't you review it briefly so that you can get some  
 18 context.  
 19 A. Okay.  
 20 Q. All right. And here in paragraph 3.6, FICO and Chubb &  
 21 Son have agreed that one consultant, ACS Commercial  
 22 Solutions, has the right to use Blaze Advisor software.  
 23 Do you see that?  
 24 A. That's correct.  
 25 Q. And in fact paragraph 3.6 expressly says, does it not,

**940****942**

1 Q. It goes on to say that, "Each party represents and  
 2 warrants to the other party that entering into this  
 3 agreement it does not rely on any representation, promises  
 4 or assurances from any other party or employee," and so  
 5 forth.  
 6 And then it ends with the sentence, "Any other  
 7 terms or conditions or amendments shall not be incorporated  
 8 herein or be binding upon any party, unless expressly agreed  
 9 to in a writing signed by authorized representatives of  
 10 client and Fair Isaac."  
 11 Agreed?  
 12 A. Yes.  
 13 Q. And then the license agreement also has a provision  
 14 called 10.4, No Waiver.  
 15 A. Yes.  
 16 Q. And that provision ends, "No waiver of any rights of a  
 17 party under this agreement will be effective unless set  
 18 forth in a writing signed by the parties."  
 19 Agreed?  
 20 A. Agreed.  
 21 Q. Now at Fair Isaac, as a matter of fact, does Fair Isaac  
 22 have a policy that identifies those persons who have the  
 23 ability to enter into an agreement on behalf of FICO?  
 24 A. Yes.  
 25 Q. Do salesmen like Mr. Sawyer or Mr. Schreiber have the

1 that ACS Commercial Solutions is the information technology  
 2 infrastructure operations outsourced to ACS Commercial  
 3 Solutions?  
 4 A. That's correct.  
 5 Q. That's to say, ACS Commercial Solutions is going to be  
 6 using Blaze Advisor for the benefit of Chubb & Son, the  
 7 division?  
 8 A. That's correct.  
 9 Q. But to get that permission, it was negotiations of  
 10 paragraph 3.6?  
 11 A. Yes.  
 12 Q. And 3.6 further says, "Provided that such use is  
 13 otherwise subject to the terms and conditions of this  
 14 agreement and does not exceed the limitations and use for  
 15 other restrictions set forth herein." Correct?  
 16 A. Yes. That's correct.  
 17 Q. And it further says, "Client shall responsible," client  
 18 Chubb & Son, "shall be responsible for assuring ACS's  
 19 compliance with the terms and conditions of this agreement."  
 20 Agreed? That's what it says?"  
 21 A. Yes.  
 22 Q. "And client shall be liable to Fair Isaac for any breach  
 23 of the agreement by ACS." It says that?  
 24 A. Yes.  
 25 Q. "The rights granted to ACS herein shall not be extended

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1 to any other third party without the prior written consent  
 2 of Fair Isaac."  
 3 A. That's correct.  
 4 Q. And if we went to paragraph 3.1, this contains a variety  
 5 of client representations and warrants that its employees  
 6 shall not under the heading License Restrictions?  
 7 A. Yes, I see that.  
 8 Q. An unauthorized third party using Blaze Advisor is not  
 9 subject to any of these restrictions, is it?  
 10 A. I'm not sure I understand your question.  
 11 Q. If a third-party consultant is using Blaze Advisor  
 12 without FICO's permission, that third-party consultant isn't  
 13 subject to any other restrictions of the license agreement,  
 14 correct?  
 15 A. That's correct.  
 16 Q. You were shown, you were shown some emails from Sawyer  
 17 and Moffat, maybe, and they were dated January 8, 2016.  
 18 So let's be clear. Those are before your notice  
 19 of breach letter of January 27th.  
 20 A. That's correct.  
 21 Q. And in the third paragraph you say, "I am writing now to  
 22 again confirm." And that "again" reference, the fact that  
 23 Sawyer had finally had gotten in contact with the client by  
 24 January about 10.8, as you say, "I am writing now to again  
 25 confirm"?

1 where there's a laundry list of these various kinds of ways  
 2 to get mergers done and acquisitions done, where each such  
 3 event shall be deemed it to be an assignment subject to this  
 4 section, which is 10.8. And then it goes on.  
 5 Q. Understood. You were shown a couple license agreements.  
 6 A. Correct.  
 7 Q. And I'm going to show you a couple more. And if you  
 8 would go to -- let's find the exhibit that's D282.  
 9 This is a license agreement between FICO and Alpha  
 10 Bank A.E., dated June 30, 2006; is that correct?  
 11 A. Sorry. I was in the wrong book.  
 12 Q. Yeah. Yeah. It's the one called your name on it  
 13 redirect.  
 14 A. Yes, I have it. Alpha Bank.  
 15 MR. HINDERAKER: Your Honor, I move Exhibit D0282.  
 16 MS. GODESKY: No objection.  
 17 THE COURT: D0282 is accepted.  
 18 BY MR. HINDERAKER:  
 19 Q. Would you turn to paragraph 8.3, which is called No  
 20 Assignment?  
 21 A. Correct.  
 22 Q. Can you tell us looking at paragraph 8.3 of this exhibit  
 23 how it compares to 10.8 of the license agreement with Chubb  
 24 & Son?  
 25 A. I think it's identical, the first sentence certainly is,

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1 A. That's right.  
 2 Q. When you were asked questions about 10.8, you said the  
 3 first sentence and the second sentence are your words were,  
 4 "Independent restrictions."  
 5 A. That's correct.  
 6 Q. Why did you say that?  
 7 A. Because that's the way it was designed.  
 8 Q. Okay. But what -- can you --  
 9 A. Why did I say that?  
 10 Q. Can you help us with that?  
 11 A. Sure. Because the first sentence which we have seen in  
 12 a number of these agreements, notwithstanding they're  
 13 negotiated in a little different -- is neither party without  
 14 the prior written consent of the other party, neither party  
 15 shall without the written consent of the other party, assign  
 16 or transfer this agreement or any part thereof.  
 17 So that's the absolute rule, the first rule.  
 18 MS. GODESKY: Objection, Your Honor.  
 19 THE COURT: Overruled.  
 20 THE WITNESS: Okay.  
 21 BY MR. HINDERAKER:  
 22 Q. Okay. That's one restriction. What's the other  
 23 independent restriction?  
 24 A. The second restriction was designed to address mergers  
 25 and acquisitions and what happens in those circumstances

1 if I check it. Sorry.  
 2 They're not quite identical, because it has the  
 3 words "or delayed" added at the end of the sentence.  
 4 Q. All right. So this one says such -- the Exhibit D0282,  
 5 Alpha Bank says, everything is the same except it says,  
 6 "Such consent shall not be unreasonably withheld or  
 7 delayed"?  
 8 A. That is correct.  
 9 Q. That's the difference?  
 10 A. That's the difference.  
 11 Q. With the exceptions of that difference, everything in,  
 12 everything else in 8.3 of the Alpha Bank agreement is the  
 13 same as 10.8 of the Chubb & Son's agreement. Do you agree?  
 14 A. Yes.  
 15 Q. Okay. Why don't you pull out the D0017 from that same  
 16 binder.  
 17 A. Okay.  
 18 Q. This one is with Humana, Inc.?  
 19 A. That is correct.  
 20 Q. This is dated May 23, 2006?  
 21 A. That is correct.  
 22 Q. I think the other was dated May -- no. It was dated  
 23 June 30, 2006.  
 24 A. Yes.  
 25 Q. So on the Humana agreement, why don't we look at



<p style="text-align: right;"><b>947</b></p> <p>1 paragraph 12.8.</p> <p>2 THE COURT: Will you be offering D17?</p> <p>3 MR. HINDERAKER: I will, yes. I should. Thank</p> <p>4 you.</p> <p>5 Your Honor, I offer D17.</p> <p>6 MS. GODESKY: No objection.</p> <p>7 THE COURT: D17 is received.</p> <p>8 BY MR. HINDERAKER:</p> <p>9 Q. And now we can turn to paragraph 12.8.</p> <p>10 A. Okay.</p> <p>11 Q. And this is also entitled, No Assignment?</p> <p>12 A. Correct.</p> <p>13 Q. And could you do the same comparison for me, whether</p> <p>14 there's any difference in the Humana 12.8 to the Chubb &amp; Son</p> <p>15 10.8?</p> <p>16 A. Excuse me. This doesn't have the language at the --</p> <p>17 following the last comma which says "will not be</p> <p>18 unreasonably withheld" that's in the Chubb &amp; Son agreement.</p> <p>19 Q. So with the Humana, the "shall not be unreasonably</p> <p>20 withheld" element that's in the Chubb &amp; Son agreement is not</p> <p>21 present in the Humana agreement.</p> <p>22 A. No, it is not.</p> <p>23 Q. From your experience, can you -- are there indicia that</p> <p>24 tell you whether a license agreement is, say, heavily</p> <p>25 negotiated or lightly negotiated? Can you discern the</p>	<p style="text-align: right;"><b>949</b></p> <p>1 Q. What did you mean by that?</p> <p>2 A. Each of them are different restrictions, and so they all</p> <p>3 work together, but they're different, independent from each</p> <p>4 other.</p> <p>5 Q. And so what was the non sequitur nature of the question</p> <p>6 then?</p> <p>7 A. Well, if I remember correctly, there's an event, comma,</p> <p>8 "Client shall make no expanded use as a result," that's</p> <p>9 driving towards maintaining the status quo. Don't do</p> <p>10 anything different today from what you were doing before</p> <p>11 while we're in this period that we provided to them.</p> <p>12 Q. That period being the 30-day period?</p> <p>13 A. Yes.</p> <p>14 Q. So nothing different during the 30-day period than what</p> <p>15 you did before?</p> <p>16 A. That is right.</p> <p>17 Q. Okay.</p> <p>18 MS. GODESKY: Objection, Your Honor.</p> <p>19 THE COURT: Sustained.</p> <p>20 BY MR. HINDERAKER:</p> <p>21 Q. That's why you said it was a non sequitur.</p> <p>22 A. Right.</p> <p>23 MS. GODESKY: Objection.</p> <p>24 THE COURT: Sustained.</p> <p>25</p>
<p style="text-align: right;"><b>948</b></p> <p>1 difference?</p> <p>2 A. Sure. I mean, the ones that are based on our template,</p> <p>3 you can do line-by-line comparisons using a tool like Word.</p> <p>4 Others are on the customer's paper and are therefore</p> <p>5 radically different.</p> <p>6 Q. By definition?</p> <p>7 A. By definition.</p> <p>8 Q. And the two agreements that I just showed you, those are</p> <p>9 both on basic paper, as FICO paper?</p> <p>10 A. Yes.</p> <p>11 Q. And did you notice whether the license agreements that</p> <p>12 Ms. Godesky showed you, were they basic paper, was the basic</p> <p>13 paper on those FICO as well?</p> <p>14 A. Yeah. They definitely started with FICO paper or</p> <p>15 template.</p> <p>16 Q. And is it fair to say that in those other agreements</p> <p>17 they were simply more heavily negotiated?</p> <p>18 A. Yes. Each one is different.</p> <p>19 Q. You were, you were asked a question by Ms. Godesky about</p> <p>20 the second sentence of paragraph 10.8 and the, and then the,</p> <p>21 "And client shall make no expanded use."</p> <p>22 And you used the phrase from her examination to</p> <p>23 you, "Well, that's a non sequitur."</p> <p>24 Do you recall that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;"><b>950</b></p> <p>1 BY MR. HINDERAKER:</p> <p>2 Q. You were asked whether FICO had an obligation to explore</p> <p>3 whether Chubb &amp; Son had expanded its use in that 30-day</p> <p>4 period. Do you recall that?</p> <p>5 A. Yes.</p> <p>6 Q. Did FICO have such an obligation?</p> <p>7 A. No.</p> <p>8 Q. You've told us, of course, that you were not included in</p> <p>9 the communications of the commercial proposal of Exhibit 94.</p> <p>10 Nevertheless, you were asked about it. You were asked about</p> <p>11 what you saw just from the reading of it.</p> <p>12 As you read Exhibit 94, is there any limitation on</p> <p>13 the -- is there any limitation on the future use of Blaze</p> <p>14 Advisor with respect to running more volume through the</p> <p>15 applications?</p> <p>16 A. There's no reference to that.</p> <p>17 Q. Does it also say that -- I'm sorry. I think it's in the</p> <p>18 next paragraph down.</p> <p>19 And it also says, "Chubb shall have the right to</p> <p>20 change the applications utilizing the Blaze Advisor software</p> <p>21 at any time and in its sole discretion without FICO's</p> <p>22 consent so long as the named applications do not exceed an</p> <p>23 amount of 15."</p> <p>24 Also says that?</p> <p>25 A. I see that. I see that.</p>

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1 use of the realtime transcript don't allow you to quote that  
 2 to the Court. So -- but it's also been pointed out that the  
 3 transcript that was quoted was accurate, so no harm, no  
 4 foul.

5 All right. Anything else from the parties?

6 MS. GODESKY: Your Honor, I just wanted to point  
 7 out something we have noticed as we have been going back  
 8 through the transcripts, that I'm just concerned documents  
 9 that are admitted during videos --

10 THE COURT: Mm-hmm.

11 MS. GODESKY: -- were not -- there is nothing in  
 12 the transcript memorializing the P or the D number that's  
 13 been entered into evidence. So I'm just concerned that  
 14 could be an issue for the appellate record. So I think at  
 15 some point we need to orally read them in.

16 THE COURT: That's fine with me. We have been  
 17 tracking them, and I have been very attentive to  
 18 distinguishing the trial exhibit number from the deposition  
 19 exhibit number. We have an accurate list, and we have been  
 20 cross-checking it with the parties, but we can certainly put  
 21 that, and I think it's a good idea, to put it on the record.

22 MS. GODESKY: Okay.

23 THE COURT: All right? Anything else on your  
 24 side?

25 MS. GODESKY: No.

1 introduction.

2 Henry Mirolyuz is a former Chubb employee, who was  
 3 with Chubb from 2006 to 2018. In July 2018, Mr. Mirolyuz  
 4 was a corporate representative and testified to the  
 5 knowledge of Federal. At the time of his deposition his  
 6 title was senior architect, Chubb claims IT. At that time  
 7 he was living in Simsbury, Connecticut.

8 The second deposition was taken January 2019. And  
 9 this time Mr. Mirolyuz was testifying in his personal  
 10 capacity, as well as a corporate representative, to the  
 11 knowledge of Federal. At that point he had left employment  
 12 with Chubb and he had left employment with Chubb effective  
 13 January 1, 2019. Both of these depositions were taken by me  
 14 on behalf of FICO.

15 (HENRY MIROLYUZ)

16 EXAMINATION

17 BY MR. HINDERAKER:

18 Q. Sir, good morning.

19 A. Good morning.

20 Q. Thank you for coming.

21 A. My pleasure.

22 Q. If you would give us, with spelling, your full name as  
 23 well as your current employer.

24 A. My name is Henry Mirolyuz, M-I-R-O-L-Y-U-Z. I'm an  
 25 employee of Chubb claims IT architecture team.

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1 THE COURT: Mr. Hinderaker? All right. Let's  
 2 bring the jury in.

3 THE CLERK: All rise for the jury.  
 4 (Jury enters.)

5

6 (In open court with the Jury present.)

7 THE COURT: Go ahead and be seated.

8 Members of the Jury, first and foremost, our  
 9 apologies. We were taking up some matters that we had to  
 10 deal with before we started testimony this morning. As I  
 11 had indicated at the beginning of the trial, that happens on  
 12 occasion. Today was one of those occasions.

13 Second of all, I hope you all had a nice weekend.  
 14 I appreciate your getting here today. I am hoping that this  
 15 will be the last "iffy" travel day for all of you, but I  
 16 make no promises.

17 By way of planning, first of all, as we've  
 18 discussed -- okay. We will shorten the lunch break  
 19 considerably, and that will speed things up.

20 For planning purposes, we think that you will get  
 21 the case for deliberation by approximately, well, early next  
 22 week, let's just put it that way for now. Okay?

23 All right. Mr. Hinderaker?

24 MR. HINDERAKER: Your Honor, our first witness by  
 25 video is Mr. Henry Mirolyuz, and I will give you his

1 Q. And where -- what's the location of your employment?

2 A. I'm located in Simsbury, Connecticut.

3 COURT REPORTER: I'm sorry?

4 THE WITNESS: Sims bur.

5 BY MR. HINDERAKER:

6 Q. And your residence is in the same area?

7 A. Same area.

8 Q. Sir, can you identify Exhibit 2 for us, please?

9 A. Exhibit 2 is my resume.

10 Q. And under professional experience, on the top line it  
 11 says, "July 2011 to present." And in that context, my  
 12 question is, How current is this resume?

13 A. This resume is as current as of 2015. Pre Chubb/ACE  
 14 merger.

15 Q. Pre-merger. If you would -- I would like you to carry  
 16 your resume forward for us from this document to date. So  
 17 pre-merger to date. What changes would there be or what  
 18 additions would there be on here?

19 A. Addition is I become the architect in claims IT  
 20 organization. So my title changed from senior technical  
 21 analyst to senior architect, and my responsibility is I'm no  
 22 longer involved with Blaze software, and I'm in charge of  
 23 architecture of claims applications and systems.

24 Q. When did you stop being involved with Blaze Advisor?

25 A. Right after the post-merger activities due to the

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1 litigations.

2 Q. Well, before then, under accomplishments, you note you

3 have been a guest speaker on multiple FICO World and

4 Business Rules Forum conferences. On how many occasions

5 were you a guest speaker?

6 A. I believe three or four FICO World conferences and one

7 Business Rules Forum, which was not FICO specific.

8 Q. And then under professional experience under the heading

9 senior technical analyst, in the second bullet, "Working

10 with EA." What is EA?

11 A. Enterprise architecture team.

12 Q. And caring on with that bullet point, "DM life cycle."

13 What is DM?

14 A. Decision -- DM, decision management. It's a FICO

15 methodology which was provided to us by FICO.

16 Q. By FICO?

17 A. By FICO.

18 Q. In the next bullet point is, "Worked with multiple teams

19 across DSO." What is DSO?

20 A. Development source organization. It's a group of people

21 who is involved in the implementation of the application.

22 As an architect, I design the application and developers

23 implement the application. That's such acronym DSO,

24 development services organization.

25 Q. Let me try that in my words. As architect, do you

1 parties. It depends on the rights and authorization

2 provided by Chubb.

3 Q. Okay. And when you say a server is a machine, is it a

4 computer?

5 A. A computer.

6 Q. All right. So you -- okay. So you just used the phrase

7 to get the applications in one data center. What is an

8 application?

9 A. It's a software which allows user to perform specific

10 functions. Depends on the components of the application.

11 Q. And is an application something that you as the -- in

12 your role on the technical side, you were involved in

13 designing the architecture for these applications?

14 A. Part of the architecture.

15 Q. Part of it. At least the Blaze Advisor part of it?

16 A. Correct.

17 Q. So you're making a distinction between the Blaze Advisor

18 software and an application that uses Blaze Advisor?

19 A. That is correct.

20 Q. And then if we go to Exhibit 5, you see the fifth

21 paragraph down, it is saying, "So we'll be using Blaze 7.1

22 with the Java business object model."

23 A. Correct.

24 Q. Do you understand that Blaze Advisor 7.1 is installed on

25 the servers in the UK?

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1 design the application?

2 A. Correct.

3 Q. And then do the development service organization people

4 do the coding?

5 A. Absolutely correct.

6 Q. And with respect to your experience, then, what does --

7 in general, what did you do to facilitate presentations to

8 business analysts?

9 A. I conducted the sessions overview of the benefits which

10 Blaze Advisor software or using Blaze Advisor software can

11 provide to the projects, future projects at Chubb, as well

12 as making sure people are familiar with the technology.

13 Q. What do you mean by the benefits of Blaze Advisor for

14 future projects at Chubb?

15 A. Any design can be implemented in multiple ways using the

16 different technology, Blaze Advisor being one of them. My

17 role was to provide -- explain to people potential benefit

18 of using the software.

19 Q. And the Blaze Advisor software resides on what's called

20 servers, correct?

21 A. Correct.

22 Q. And I would appreciate your definition of a server.

23 What is a server?

24 A. It's a machine located -- not assigned to a specific

25 individual, and accessible by one or many developers or

1 A. No. I would interpret it that it will be or could be.

2 It doesn't say that they are using it at the point of right

3 in the e-mail.

4 Q. So the point of writing the e-mail, your interpretation

5 is that they planned to use Blaze Advisor 7.1?

6 A. Correct.

7 Q. For an application?

8 A. Where again, the question is I cannot say one way or

9 another if they plan to use it or they plan to use the

10 software Blaze 7.1.

11 Q. What was the application of Blaze Advisor that he is

12 advising you about?

13 A. They had a policy administration system for the CSI for

14 the specialty lines in Europe, and at the time of the

15 writing the e-mail they were planning to supplement it with

16 business rules written for Blaze Advisor software.

17 Q. What is a policy administration system?

18 A. It's a system which would allow them to provide the

19 insurance to the customers, such as software to allow them

20 to provide the insurance for the customers.

21 Q. What is a no touch renewal?

22 A. It's allow the renewal which can be issued -- it's a

23 policy renewal which can be issued without any human

24 interaction. Essentially automated insurance of the

25 renewal.

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1 Q. Is it fair to say this is an application that uses Blaze  
2 Advisor, among other components, to automate the renewal  
3 process for insurance policies?  
4 A. It's not the application. It is a characterization of  
5 the renewal, as part of the renewal process through the  
6 application, no touch renewals. It is characterization of  
7 renewals into the no touch categories.  
8 COURT REPORTER: Into the no touch category?  
9 THE WITNESS: It's not a software. It's a  
10 process.  
11 BY MR. HINDERAKER:  
12 Q. So does that mean that using the rules management system  
13 with Blaze Advisor, the software determines that a  
14 particular application can proceed without human  
15 intervention?  
16 A. Correct, but particular renewal can proceed without  
17 human intervention.  
18 Q. And that the judgment that the renewal can proceed  
19 without -- you know, there is -- software is a -- and we're  
20 talking about it doing things like thinking and judging, but  
21 that determination that the renewal can proceed without  
22 human intervention is a determination using the software  
23 with Blaze Advisor?  
24 A. Correct.  
25 Q. Sir, Exhibit 6 is a document that's part of the

1 you've looked at, that Blaze Advisor software was installed  
2 whether on a computer or a "server" in the UK in 2009?  
3 A. Agree.  
4 Q. And what is Evolution?  
5 A. It is the name of the policy administration system used  
6 in Canada.  
7 Q. And the Chubb Insurance Company of Europe has used EZER  
8 and ADAPT?  
9 A. Correct.  
10 Q. And those are application to use Blaze Advisor software,  
11 correct?  
12 A. Correct.  
13 Q. And those applications were also installed on servers in  
14 Europe?  
15 A. I -- correct.  
16 Q. And this, sir, is Deposition Exhibit 179.  
17 Can we move that thing? Thank you.  
18 Have you seen this 30(b)(6) deposition before this  
19 morning?  
20 A. I did.  
21 Q. Okay. So just to reaffirm, you intend to testify on a  
22 30(b)(6) basis to Topics 15, 16 and 17; is that correct?  
23 A. That's correct. I do not know because I haven't looked  
24 in my paycheck.  
25 Q. So you don't know one way or the other.

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1 litigation process. It's Federal Insurance Company's second  
2 supplemental answers to interrogatory numbers 2, 3 and 4.  
3 Do you know if you've seen this before?  
4 A. I did.  
5 Q. Okay. And have you had a chance to review it, and do  
6 you know whether the answers and responses in the document  
7 are accurate?  
8 A. It is. Yes, to both.  
9 Q. All right. And in the last page of Exhibit 6, you will  
10 see a verification or a page that's titled Verification.  
11 A. Yes.  
12 Q. Okay. And it's unsigned, but it's set up for your  
13 signature.  
14 Would you read that verification and tell me  
15 whether you agree with it?  
16 A. "Henry Mirolyuz" --  
17 Q. You can read it to yourself.  
18 A. I agree with it.  
19 Q. Okay. And on page -- let me back up. On page 2 there  
20 is Interrogatory Number 2 that's set forth there.  
21 And then -- I'm not trying to rush you. I'm just  
22 going to give you orientation. And then under the second  
23 supplemental answer on page 3, you will see where it says,  
24 "1. Chubb Insurance Company of Europe SC at least by 2010."  
25 And do we agree, based upon the e-mails that

1 A. Yes, exactly.  
2 Q. Who employees you now?  
3 A. Altair Technical Services.  
4 Q. When did you start that employment?  
5 A. January 1st of 2019.  
6 Q. Do you recall when you moved from your position working  
7 with Blaze Advisor software to we'll call it Chubb IT  
8 claims?  
9 A. I believe in the beginning of 2015.  
10 Q. Now the merger of Chubb and ACE was 2016?  
11 A. Correct.  
12 Q. And so you think it was the year before?  
13 A. A year before, yes. Because of the internal  
14 organization.  
15 Q. This is Exhibit 154 from an earlier deposition. I just  
16 have some questions for you about it. I understand the date  
17 is -- I understand the date, 2018.  
18 But you're familiar with reports that are called  
19 ChEAR reports or Chubb Enterprise Application Registry?  
20 A. Correct, I am.  
21 Q. Could you explain what they are for me, please?  
22 A. This is the repository or registry of all the  
23 application -- production application at Chubb.  
24 Q. Okay. So as a repository of the production applications  
25 at Chubb, is it a report that reports on the status of

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1 things as of the date of the report?

2 A. Correct. As they're entered into the repository.

3 Q. The status of things as the information is entered into

4 the repository?

5 A. Correct.

6 Q. Go to the fifth page in. Now it's on the bottom

7 third -- Evolution Asia Pacific, Blaze Advisor, and then

8 Blaze Advisor 7.1. Do you see that line?

9 A. Correct.

10 Q. Okay. So this is telling us that Blaze Advisor 7.1 is

11 being used for Evolution in the Asia Pacific zone?

12 A. What it tells me is that the Evolution application was

13 used by Asia Pacific.

14 Q. And does it tell -- yes. And is it saying that that

15 application is running on Blaze 7.1?

16 A. It's using Blaze 7.1, correct.

17 Q. Okay. Thank you.

18 So I've given you Exhibit 184, which is, by its

19 heading -- well, it's dated April 9, 2008, and by its

20 heading it's another ChEAR monthly maintenance, another

21 ChEAR report. Do you agree?

22 A. Agree.

23 Q. Would you go to what's marked as page 8 of 26 in the

24 document.

25 A. Okay.

1 Dean Lawton, is he from Europe?

2 A. According to the e-mail header, yes, he is.

3 Q. And are all of the recipients from Europe, according to

4 the header?

5 A. That's correct.

6 Q. And then the carbon copy of Ewen Setti. He's European.

7 He is from London as well.

8 A. Yes, he is.

9 Q. Do you know what the application Adapt/Adapt BE is?

10 A. To my knowledge, it's a policy administration system for

11 the -- the ABL line of business.

12 Q. And would you give us the meaning of a policy

13 administration system?

14 A. It's an application that allows to book, bind and issue

15 policies -- insurance policies for the specific line of

16 businesses.

17 Q. Okay. But I guess let's just talk about policy

18 administration systems in general and your knowledge about

19 that. As a general statement, brokers and agents use policy

20 administration systems to sell insurance to their customers?

21 A. It's primarily -- to my knowledge, it's primarily used

22 by the internal staff, basic information provided by brokers

23 and agents. Of course, there could be the exception to the

24 rule, but as a general rule it's for the internal staff.

25 Q. So then based upon the information provided by the

**982****984**

1 Q. So on page 8 of 26, if we go down, what, five and six

2 lines, it's telling us that, that Blaze Advisor 6.1 and 6.5X

3 are being used. And can you tell from this exhibit where

4 that use is?

5 A. No. Actually it doesn't tell that it's being used. It

6 says it's being available as a technology.

7 Q. Okay. Thank you. So that's its meaning?

8 A. Correct.

9 Q. It's available as a technology. Whether it's used or

10 not, we don't know from this exhibit?

11 A. Correct.

12 Q. If it is used, where it's used, we don't know from this

13 exhibit?

14 A. We don't know.

15 Q. This is an exhibit from your earlier deposition when we

16 talked about installations in the UK. As you see, the

17 document comes from yourself to Richard Johnson and others.

18 Can you confirm for me that as of this date this

19 document reports that Blaze Advisor 6.7 is being used in

20 Europe?

21 A. It does not confirm that it was used. All it confirms

22 is that I provide the information where they can -- if they

23 choose so to download the software, but it does not confirm

24 that it was used.

25 Q. Showing you Exhibit 185 an e-mail dated May 25, 2010.

1 brokers and agents, the policy administration system then

2 responds to the broker and agent with the proposed solution

3 or the proposed policy and a quote for that policy?

4 A. Correct. And if they accept it, they the book, bind and

5 issue the policy.

6 Q. Then in red -- and then you see the next three entries

7 in red with different Blaze Advisor versions. Do you have

8 any understanding what the red designates?

9 A. Red designates that we are behind the current version.

10 So 7.1 is the current version. That particular application

11 could be using version which is behind the current one.

12 Q. I'm now giving you Exhibit 187, October 9, 2013. And if

13 you go to the table at the back, you'll see it's very

14 similar to the table that I just showed you. I'd like to

15 direct my questions to the second to the last line where it

16 says, "EUZ" and then "Exari Pilot." Do you see where I'm

17 saying?

18 A. Yes.

19 Q. Do you know what the application Exari Pilot is?

20 A. I do not.

21 Q. The document itself says it's running on Blaze Advisor

22 version 7.1. Do you agree?

23 A. Yes, according to the table.

24 Q. Based upon that, can you identify any person from FICO

25 that assisted in the installation of Blaze Advisor in the

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1 UK?

2 A. I cannot identify those. They dealt with the help desk

3 support, and they would raise the tickets. So they do

4 not -- that worked generically as FICO. Mike Sawyer would

5 be the contact person for me in case any additional

6 assistance would be needed.

7 Q. Do you recall yourself contacting or engaging Mike

8 Sawyer and yourself?

9 A. I did.

10 Q. And when was that?

11 A. That's during the -- between 2010 and 2014, if my memory

12 serves me correctly.

13 Q. Tell me about your contacts with Mike Sawyer.

14 A. I got informed by developers that there was an issue and

15 they need to be resolved quickly. So I would just make him

16 aware. Because as the client representative of FICO, he has

17 an influence to expedite the request to go to the help desk.

18 Q. So is it fair to say that you advised Mike Sawyer making

19 him aware that people in the UK were reaching out to the

20 help desk for help?

21 A. Correct. In the UK or U.S. That was normal part of my

22 working relationship with him.

23 Q. Okay. Do you recall specifically reaching out to Mike

24 Sawyer specific to install issues with regard to UK?

25 A. I believe I did.

1 mind, go through these applications. So let's start with

2 CSI Express?

3 A. Okay.

4 Q. So what's the function or purpose of CSI Express?

5 A. It's a policy administration system for --

6 COURT REPORTER: For what?

7 THE WITNESS: Policy administration system for

8 specialty lines.

9 BY MR. HINDERAKER:

10 Q. And does it encompass all of the lines within the

11 specialty line of business?

12 A. I believe -- it is a majority of them.

13 Q. Are you saying you don't know, so you're assuming a

14 majority?

15 A. I cannot speak for sure this it is all the lines within

16 the policy. So yes. I don't know for fact.

17 Q. And CSI Express uses Blaze Advisor?

18 A. Correct.

19 Q. Among other technologies?

20 A. Among other technologies, yes.

21 Q. When I say it's using Blaze Advisor, we'll assume it can

22 be among other technologies.

23 A. Correct.

24 Q. Okay. And what is the purpose of a policy

25 administration system?

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1 Q. You believe you did?

2 A. Yes.

3 Q. Do you remember when?

4 A. I don't recall the exact date.

5 Q. Same questions with respect to installations in Canada.

6 A. Again, I did -- yes, I did. And I do not recall the

7 exact date.

8 Q. So, again, there is no individual person at FICO that

9 you know of that assisted in the installation?

10 A. No.

11 Q. To your knowledge, who do you -- did anybody tell you --

12 as opposed to your assumptions, did anybody tell you that

13 Canadian Chubb representatives placed tickets at the help

14 desk?

15 A. My conversations in the past with Tony Zahn, who was the

16 architect for the Canadian zone, that they opened the

17 ticket.

18 Q. Mr. Miroluz, I am showing you an exhibit that we are

19 numbering 188.

20 So I would like you to go to the table the last

21 page of 188, if you would, as well as go to that second

22 exhibit the 30(b) 6 notice. Do you have those two in front

23 of you. Do you have that?

24 A. Yes.

25 Q. What I would like to do is, with these two, these two in

1 A. As I said before, to book, bind and issue the policy

2 for -- in this particular case, specialty line of business

3 in the case of CSI Express.

4 Q. What is automated renewal process?

5 A. It is part of the CSI Express suite tools which allows

6 automated processing of the renewals issued through the CSI

7 Express.

8 Q. It allows the what?

9 A. Automated processing of renewals for policies issued

10 through the CSI Express.

11 Q. Okay. And by, "Automated renewal of policies issued

12 under CSI Express," does that mean renewal of policies

13 without human intervention?

14 A. Correct.

15 Q. What is CSI Express renewal rule maintenance center, its

16 purpose and function?

17 A. It is part -- it's an applications which is part of

18 Blaze Advisor software which allows nontechnical user

19 maintenance of the business rules.

20 COURT REPORTER: The business what?

21 THE WITNESS: Business rules.

22 COURT REPORTER: Rules?

23 THE WITNESS: Yeah. R-U-L-E-S.

24 BY MR. HINDERAKER:

25 Q. And what is the function and purpose of CSI Express



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1 renewal What If Simulation Tool?

2 A. It is a testing tool which allows to simulate the impact

3 of business rules changes.

4 Q. Is it accurate to say that one of the features of Blaze

5 Advisor is that nontechnical people can enter the business

6 rules of Chubb into Blaze Advisor?

7 A. Correct.

8 Q. And that might be -- that is -- and they might use the

9 renewal rule maintenance center tool for that?

10 A. That is correct.

11 Q. And then to see if the rule that they just entered into

12 Blaze Advisor operates the way they intended that rule to

13 operate in any scene, right?

14 A. (Moves head in affirmative manner.)

15 Q. That's the What If Simulation Tool?

16 A. Correct.

17 Q. So that at the end of the process, the automated renewal

18 application within the CSI Express policy administration

19 system will be operating in accordance with the company's

20 intentions for the -- for the offering and the booking and

21 the binding of a policy?

22 A. That is correct. For the renewal process.

23 Q. In the context of a new policy, tell me how -- what CSI

24 Express does, how it functions?

25 A. I cannot provide this information. That's a part of the

1 functions of CSI Express the human underwriter uses in that

2 process of the new policy?

3 A. I do not. Again, they have their own flow. I'm not

4 private to that information.

5 Q. All right. And then the same kind of questions with

6 respect to renewals.

7 Now we have an existing customer whose policy is

8 up for renewal. Tell me how -- tell me the function and

9 what CSI Express in conjunction with automated renewal

10 process does?

11 A. Again, my answer is going to be similar to my other

12 answer. I'm not familiar with the process to present the

13 renewal.

14 Q. You're not familiar with what the underwriter does?

15 A. Exactly.

16 Q. Tell me what the application does.

17 A. Again, I'm not sure of all the parts and I'm not

18 familiar with all the parts of the application. The part I

19 am familiar is the policy, when it's due for renewal, would

20 go through the automated renewal process, which would either

21 automatically book, bind and issue the policy or allow the

22 underwriters to any potential problem with the renewals.

23 Q. Okay. So we spoke before about the automated renewal

24 being a renewal without human intervention?

25 A. Correct.

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1 business flow. I'm not familiar with the business flow.

2 Q. What do you mean by "business flow"?

3 A. CSI Express is operated by the business people, in this

4 case underwriters. What type of flow to create a new policy

5 or to add new customers, I'm not privy to that information.

6 Q. Okay. Do you know that they use CSI Express for that

7 function of new customers?

8 A. Yes, I know they do. Correct.

9 Q. Okay. And do you know that CSI Express for new

10 customers has a function of presenting to the new customer

11 the proposed policy for booking -- for quoting, booking and

12 binding?

13 A. Not the CSI Express directly. The underwriter would

14 work with the CSI Express, and it's up to them to present

15 the results to the customers.

16 Q. Up "to them" being who?

17 A. Underwriters.

18 Q. The underwriters. So the underwriters of we'll call it

19 "big Chubb" presents that solution to the broker who

20 presents it to his customer?

21 A. Correct. That's my understanding.

22 Q. Mm-hmm. Mm-hmm. And in that process, the human

23 underwriter uses CSI Express?

24 A. That is correct. That's my, yes, my understanding.

25 Q. Okay. And do you have knowledge to tell us what

1 Q. Correct? And do you understand that CSI Express, using

2 Blaze Advisor, will -- I'll call it triage a renewal to

3 highlight for a human underwriter the issues that the person

4 has to address?

5 A. Correct.

6 Q. So one of the functions of the software application is

7 to focus the underwriter's work on those questions that need

8 his attention, not on all questions?

9 A. Correct.

10 Q. Let's go to profitability indicator. What is the

11 function and purpose of that application?

12 A. This is the part of the CSI Express, and its purpose to

13 assess the risk of that particular policy, associated with

14 that particular policy.

15 Q. Would it be just as correct to say to assess the risk of

16 the particular customer?

17 A. Correct.

18 Q. So that a policy is offered whereby the pricing is

19 aligned with the risk policy?

20 A. That is correct.

21 Q. With that understanding, I'm still not clear what

22 profitability indicator does.

23 A. It essentially calculates the risk factor or risk score

24 for that particular policy or particular customer as you

25 said.

<p style="text-align: right;"><b>993</b></p> <p>1 Q. All right.</p> <p>2 A. And that's based on that score, the underwriter can</p> <p>3 assess the severity of the risk.</p> <p>4 Q. And assessing the severity of the risk then informs the</p> <p>5 premium, the price?</p> <p>6 A. That, yes, among other things.</p> <p>7 Q. Among other things. Yes, among other things.</p> <p>8 It informs what solution is going to be provided</p> <p>9 by way of the insurance policy?</p> <p>10 A. Exactly.</p> <p>11 Q. And are there situations in which, for the renewal --</p> <p>12 well, and then does profitability indicator -- does that</p> <p>13 operate with respect to each renewal application?</p> <p>14 A. For the specific line of businesses. So not every line</p> <p>15 of business would go through the profitability --</p> <p>16 profitability indicator is only for a certain line of</p> <p>17 businesses.</p> <p>18 Q. Okay. So there is a broader -- there is a broader array</p> <p>19 of business that goes through CSI Express?</p> <p>20 A. Correct.</p> <p>21 Q. And within that broader array, there is a subpart of</p> <p>22 that which, to which profitability indicator functions?</p> <p>23 A. Correct.</p> <p>24 Q. And then within that subpart, will profitability</p> <p>25 indicator function and then one possible outcome is that the</p>	<p style="text-align: right;"><b>995</b></p> <p>1 A. It was an extension of the profitability indicator or</p> <p>2 predictive modeling. It's additional to provide the</p> <p>3 guidance in human readable form, instead of score providing</p> <p>4 the wording.</p> <p>5 Q. Okay. And then under the CSI SBU, there is the</p> <p>6 automated renewal process and that the subpart ARP 1,</p> <p>7 renewal categorization. What is that?</p> <p>8 A. Ultimately, the renewal process consists of two parts.</p> <p>9 It is determining -- ARP 1 specifically focuses on te</p> <p>10 determining if policy is eligible to be processed</p> <p>11 automatically.</p> <p>12 Q. If it is, then it is processed automatically?</p> <p>13 A. Yes.</p> <p>14 Q. And if it isn't, it goes to a human underwriter?</p> <p>15 A. Exactly. Correct.</p> <p>16 Q. And then the issues to be addressed are highlighted?</p> <p>17 A. Correct.</p> <p>18 Q. What is ARP 2?</p> <p>19 A. If policy is eligible for renewal automation, the ARP 2</p> <p>20 is taking care for all the issuance -- book, binding and</p> <p>21 issuance process associated with the renewal process.</p> <p>22 Q. So ARP 2 is the instances where the policy is</p> <p>23 automatically renewed?</p> <p>24 A. Correct.</p> <p>25 Q. Let's talk about DecisionPoint. What is that, its</p>
<p style="text-align: right;"><b>994</b></p> <p>1 renewal is renewed automatically?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. So the information that profitability -- the</p> <p>4 score that profitability indicator generates will inform</p> <p>5 other parts of the system and perhaps -- and there will be</p> <p>6 instances where human intervention is not necessary for the</p> <p>7 policy to be renewed?</p> <p>8 A. Correct.</p> <p>9 Q. And if human intervention is necessary for the policy to</p> <p>10 be renewed, the software application highlights for the</p> <p>11 human underwriter what to address?</p> <p>12 A. That is correct.</p> <p>13 Q. On Exhibit 188 we have the SBU -- I'm still more or less</p> <p>14 talking about CSI Express, but we have the SBU CSI.</p> <p>15 A. Correct.</p> <p>16 Q. And that's stands for Chubb specialty lines?</p> <p>17 A. Insurance.</p> <p>18 Q. Or insurance. Chubb Specialty Insurance.</p> <p>19 And then if we look at te cell CSI Express, it has</p> <p>20 a corresponding subpart, predictive modeling?</p> <p>21 A. Correct.</p> <p>22 Q. What is that?</p> <p>23 A. It's the old name for profitability indicator.</p> <p>24 Q. And then it has another subcell, underwriting guidance.</p> <p>25 What is that?</p>	<p style="text-align: right;"><b>996</b></p> <p>1 function and purpose?</p> <p>2 A. DecisionPoint is how to make it quote, quote --</p> <p>3 COURT REPORTER: I'm sorry?</p> <p>4 THE WITNESS: Automated quoting system for small</p> <p>5 book of business.</p> <p>6 BY MR. HINDERAKER:</p> <p>7 Q. Is it, what is the -- is there a functional relationship</p> <p>8 between DecisionPoint and CSI Express?</p> <p>9 A. Correct. Yes.</p> <p>10 Q. And what is that relationship?</p> <p>11 A. The quote issued in the DecisionPoint, if they are</p> <p>12 accepted by the customers, are ultimately entered as the</p> <p>13 policy in CSI Express.</p> <p>14 Q. All right. So let's start in the instance of -- so</p> <p>15 DecisionPoint is an application intended for a certain</p> <p>16 segment of the market?</p> <p>17 A. Correct.</p> <p>18 Q. And let's take a customer that's in that segment who is</p> <p>19 interested in a new -- say a noncustomer in that segment who</p> <p>20 is interested in becoming a customer, so it's a new policy.</p> <p>21 DecisionPoint functions -- tell me how DecisionPoint</p> <p>22 functions in the context of a new policy.</p> <p>23 A. The customer submits the form to the Chubb employee who</p> <p>24 is responsible for entering the information into</p> <p>25 DecisionPoint in the system.</p>

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1 Q. Can I -- so the customer -- does a customer access the  
 2 portal directly, or does the customer access it through the  
 3 agent/broker?  
 4 A. It is directly or through the agent/broker, but they  
 5 have to submit the application, paper application.  
 6 Q. So there is a customer-facing portal in DecisionPoint?  
 7 A. Not necessarily a customer-facing portal. It's not a  
 8 customer-facing portal. It's a paper application which they  
 9 fill up and submit it to the mailbox or fax it to the Chubb,  
 10 the Chubb team responsible for that.  
 11 Q. Okay. So hard copy application is submitted to either a  
 12 broker -- submitted to Chubb either directly or through a  
 13 broker/agent?  
 14 A. Correct.  
 15 Q. And now what happens?  
 16 A. The part of the team who is responsible for entering the  
 17 information would enter the information into the  
 18 DecisionPoint application.  
 19 Q. Is that a manual process?  
 20 A. Manual process. Internal Chubb manual process.  
 21 Q. So the information is entered into DecisionPoint?  
 22 A. Automated process picks up this information. It goes  
 23 through the -- I'm just going by the list here -- goes  
 24 through the eligibility process, which validates if the risk  
 25 is acceptable. I'm looking into the eligibility here.

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1 Q. Mm-hmm (Yes).  
 2 A. It goes through the pricing process, which determines --  
 3 if risk is acceptable, determines a price for that  
 4 particular risk. It goes through some of the data  
 5 normalization, if necessary.  
 6 Q. What does "data normalization" mean?  
 7 A. Sometimes application submitted -- if address is missing  
 8 or address might not be -- zip code might not be correct.  
 9 So type of data validation, data correction. And it  
 10 generates the list of applicable endorsements.  
 11 Q. So it looks to see if there is an opportunity to sell  
 12 more insurance?  
 13 A. Not necessarily. Whether there's limitations on the  
 14 policy. Different outside limits, type of additional  
 15 coverage, which restricts the risk, because it depends on  
 16 the risk.  
 17 Q. So I imagine, is it accurate to say that each individual  
 18 application is going to be individually accessed?  
 19 A. Correct.  
 20 Q. In that individual assessment a decision is made whether  
 21 additional endorsements would be appropriate for that  
 22 circumstance?  
 23 A. Exactly.  
 24 Q. It may be in some circumstances yes, and then they'll be  
 25 presented, and some circumstances no?

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1 A. It is never in bulk. It is individual risk being  
 2 assessed.  
 3 Q. So now that's completed.  
 4 A. It generates the quote letter, which the person in  
 5 internal Chubb team responsible for DecisionPoint will  
 6 either mail or e-mail to the customer or agent or broker.  
 7 Q. The quote letter?  
 8 A. Yes.  
 9 Q. And the quote letter is the offer at that price to sell  
 10 and bind insurance for that customer?  
 11 A. Correct.  
 12 Q. And DecisionPoint uses Blaze Advisor?  
 13 A. Yes.  
 14 Q. Let's go to -- if we look at Exhibit 188, the next SBU  
 15 is CCI, Chubb Commercial Insurance?  
 16 A. Correct.  
 17 Q. And let's talk about CUW. Does CUW stand for  
 18 "commercial underwriting workstation"?  
 19 A. That is correct.  
 20 Q. If you would tell us the functional purpose of CUW.  
 21 A. CUW is the system which allows underwriters to maintain  
 22 the records of the interaction with the customers --  
 23 documents, notes, et cetera.  
 24 Q. Okay. How is CUW, how is CUW used in connection with  
 25 the sale of insurance?

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1 A. As underwriter interacts with the customer, any  
 2 conversation, any documents he receives from insured has  
 3 been recorded and either manually or stored in the CUW.  
 4 Q. Okay. And CUW uses Blaze Advisor?  
 5 A. One of -- CUW is the suite of tools.  
 6 COURT REPORTER: The what?  
 7 THE WITNESS: Suite.  
 8 MR. HINDERAKER: S-U-I-T-E.  
 9 COURT REPORTER: Oh.  
 10 THE WITNESS: Only one application, inventory  
 11 management, is using in Blaze Advisor software.  
 12 BY MR. HINDERAKER:  
 13 Q. What is the function and purpose of inventory  
 14 management?  
 15 A. It assesses number of policies assigned to that  
 16 particular underwriter and raises the alert if number  
 17 exceeds certain thresholds.  
 18 Q. Is there an interrelationship of function between CSI  
 19 Express and CUW?  
 20 A. CUW is only as a ledger of records. It has nothing to  
 21 do with the CSI Express, just additional convenience for the  
 22 underwriter to store their records.  
 23 Q. Okay. And let's go to, let's go to CSI claims. Can you  
 24 tell me what that application is?  
 25 A. This was a small application developed for the actuarial

**1001****1003**

1 to assess a claim's severity based on the policy  
 2 information.  
 3 Q. And when is this assessment done?  
 4 A. After claims is processed, after claims is -- after  
 5 payment is issued, it gets stored. And CSI claims compares  
 6 the policy information against the claims and payouts and,  
 7 based on that, determines severity and criteria.  
 8 Q. And in the context of a customer whose policy is to be  
 9 renewed, does CSI Express in any of its functions or  
 10 automated renewal, does it then access the information in  
 11 CSI claims for processing in the context of a renewal?  
 12 A. No, it's not. It's purely a reporting tool for the  
 13 underwriter -- for the actuarials to get the insight into  
 14 the data. It's not used by CSI Express or renewal process.  
 15 Q. Okay. And CSI claims uses Blaze Advisor?  
 16 A. Correct.  
 17 Q. And how does it use Blaze Advisor?  
 18 A. It creates -- similar to profitability indicator, it  
 19 creates a severity score based on the criteria of the data,  
 20 based on a set of the business rules.  
 21 Q. So we have the data that is the claims severity -- you  
 22 know, we have the underlying claim being the data. And then  
 23 Blaze Advisor -- through Blaze Advisor scores are generated  
 24 that are the consequence of that data applied against the  
 25 business rules of Chubb?

1 A. Generate the premium, not even the quote, just generate  
 2 the premium.  
 3 Q. Generate the premium?  
 4 A. Then somebody takes the premium and present it to the  
 5 customer. Whatever means they choose.  
 6 Q. Okay. Thank you. And then let's go to TAPS. And that  
 7 stands for Texas Accident Prevention System?  
 8 A. Correct.  
 9 Q. And TAPS uses Blaze Advisor?  
 10 A. One of the functions, yes. That's one of the tools.  
 11 Q. And what's the functional purpose of TAPS?  
 12 A. To my knowledge, in Texas there is a requirement that  
 13 certain workers' comp policies, holders of certain workers'  
 14 comp policies are offered additional services. The purpose  
 15 of the TAPS is to issue the letter after the policy is --  
 16 generate a letter for certain types of workers' comp  
 17 policies after they are issued.  
 18 Q. Is it fair to say that TAPS is used to ensure compliance  
 19 with Texas requirements?  
 20 A. Yes. I believe it is.  
 21 Q. Is it fair to say that without compliance with Texas  
 22 requirements, insurance policies cannot be sold of this  
 23 particular kind?  
 24 A. Yes.  
 25 Q. Did you say TAPS -- what were the kinds of insurance

**1002****1004**

1 A. Correct.  
 2 Q. And then do you know how that is used for the processing  
 3 of the claims?  
 4 A. It's not used for the processing of the claims itself.  
 5 It could be used potentially by actuarials for whatever role  
 6 they -- whatever functionality they execute, but it's not  
 7 used in a production sense or for the processing of  
 8 particular claim or the policy.  
 9 Q. Okay. And then let's go to -- let's go to -- let's go  
 10 back to CCI and let's go to IRMA. And that stands for  
 11 individual rate modification application?  
 12 A. Correct.  
 13 Q. Okay. And IRMA uses Blaze Advisor?  
 14 A. That is correct.  
 15 Q. And what's the function and purpose of IRMA?  
 16 A. It's a calculation of the premium. It has a set of the  
 17 rate tables and calculation of the premium for a certain  
 18 small book of business.  
 19 Q. And how does that relate to the sale of that book of  
 20 business to the customer?  
 21 A. It's just to provide them the quote on a potential  
 22 premium.  
 23 Q. But it is the Blaze Advisor software that is used to  
 24 take the facts, apply the rules and generate the quote to  
 25 offer the customer?

1 policies that TAPS --  
 2 A. It's certain types of the workers -- to my knowledge,  
 3 it's certain types of workers' comp.  
 4 Q. Workers' comp?  
 5 A. Workers' comp, yes.  
 6 Q. Let's go to premium booking. Premium booking uses Blaze  
 7 Advisor?  
 8 A. For one particular functionality, yes.  
 9 Q. Okay. What is that?  
 10 A. It's a premium -- premium validation.  
 11 Q. And what does that mean?  
 12 A. To make sure that the premium is in compliance with  
 13 Chubb rules and regulations.  
 14 Q. Okay. So that's the particular -- I'm sorry. Are you  
 15 telling me that that's the particular function of the Blaze  
 16 Advisor component of premium booking?  
 17 A. Correct.  
 18 Q. Can you tell me anything more about the premium booking  
 19 application than you have already said in terms of the full  
 20 extent of the application?  
 21 A. The only thing I can speak to that after the policy is  
 22 issued, the premium is processed to the premium booking to  
 23 make sure it's properly recorded. That's the extent of my  
 24 knowledge for that particular application.  
 25 Q. Let's go to Cornerstone. Cornerstone on Exhibit 188 is

**1005****1007**

1 part of the Surety SUB, and that's your understanding as  
 2 well?  
 3 A. It is, Yes.  
 4 Q. And Cornerstone uses Blaze Advisor?  
 5 A. Actually, based on my knowledge, it was intended to use  
 6 the Blaze Advisor; however, it was never fully implemented.  
 7 Q. When was Blaze Advisor intended to be used?  
 8 A. It was -- the process of adding Blaze Advisor to the  
 9 Cornerstone applications started in around 2014, if my  
 10 memory is correct.  
 11 Q. Mm-hmm. And the process never completed?  
 12 A. The entire process was never completed, and it was never  
 13 deployed to production as part of the Cornerstone  
 14 application.  
 15 Q. Do you know if Chubb uses, as of the time you were with  
 16 the company, was there an application in use called  
 17 Cornerstone?  
 18 A. It was deprecated after the merger, and then ACE  
 19 equivalent was chosen to use for the Surety.  
 20 COURT REPORTER: I'm sorry?  
 21 THE WITNESS: ACE, the name of the new company  
 22 was -- ACE software was chosen to be used for the Surety.  
 23 BY MR. HINDERAKER:  
 24 Q. And "deprecated" for us commoners means?  
 25 A. No longer being used.

1 EZER application?  
 2 A. Similar to CSI Express, it was used to develop  
 3 renewal -- automated renewal policy, ARP 1 portion of the  
 4 CSI Express automatic renewal process.  
 5 Q. Do you know whether EZER is used in the context of new  
 6 applications in Europe?  
 7 A. Can you clarify what "new application" means?  
 8 Q. New application means not an existing customer, seeking  
 9 to become a customer. Not a renewal, but a new policy.  
 10 A. I believe, to my knowledge, at this point it's not used  
 11 for the new customers. It's on a deprecation list and only  
 12 existing business being used EZER.  
 13 Q. To your knowledge, EZER is being used today in Europe?  
 14 A. Correct. Let's put it this way: It exists in Europe;  
 15 it has not been removed from the application list, but it's  
 16 on the list to be deprecated.  
 17 Q. Someday. Do you know when?  
 18 A. I don't know.  
 19 Q. Have you heard when?  
 20 A. No.  
 21 Q. How about an Adapt? A-D-A-P-T. What's the function and  
 22 purpose of Adapt?  
 23 A. It is a policy admin system for the accident and health,  
 24 I believe, line of business.  
 25 Q. Okay. And do you know the geographical regions to which

**1006****1008**

1 Q. So the Cornerstone application was being used up to the  
 2 time of the merger -- up to the time it was deprecated?  
 3 A. Yes. It was used, but without the Blaze Advisor.  
 4 Q. Tell me about the application called Claims Connect.  
 5 A. Claims Connect is the ACE, original ACE claims, claims  
 6 system.  
 7 Q. Does it use Blaze Advisor?  
 8 A. No, it does not.  
 9 Q. Tell me about the application Small Commercial?  
 10 A. Small Commercial was intended to be an application to  
 11 process the small book of business for the commercial lines  
 12 of businesses --  
 13 Q. Mm-hmm (Yes).  
 14 A. -- and does not use Blaze Advisor.  
 15 Q. Was it intended to use Blaze Advisor?  
 16 A. It started development, but we never discuss it. It was  
 17 intended to use the business rules; however, Blaze Advisor  
 18 as a tool was never discussed.  
 19 Q. EZER. Tell me the function and purpose of EZER.  
 20 A. To my knowledge, it's a commercial policy admin system  
 21 for the European zone.  
 22 Q. And it uses Blaze Advisor?  
 23 A. As one of the functions, yes.  
 24 Q. Do you know the particular functions that Blaze Advisor  
 25 uses -- that Blaze Advisor is used for in the context of the

1 Adapt was used?  
 2 A. To my knowledge, it was used in Canada.  
 3 Q. Adapt uses Blaze Advisor?  
 4 A. Correct, for one of the functions.  
 5 Q. What function is that?  
 6 A. Underwriting guidance.  
 7 Q. Is Adapt -- to your knowledge, is the application called  
 8 Adapt different in terms of being a policy administration  
 9 system?  
 10 A. It's not. I believe it's one and the same. I've not  
 11 heard of the stand-alone Adapt application.  
 12 Q. So understanding you haven't heard of the stand-alone  
 13 Adapt application, did you say you believe it is a policy  
 14 administration system?  
 15 A. It is a policy administration system for the ABL line of  
 16 business. That's the context I know of Adapt.  
 17 Q. And are you using the same definition of policy  
 18 administration system that we talked about before?  
 19 A. Correct. Yes.  
 20 Q. And then do you know if there is any difference between  
 21 Adapt and Adapt ABL?  
 22 A. No, I don't. I've never heard.  
 23 Q. And then let's go to Evolution. Do you know -- what is  
 24 that application?  
 25 A. It's a policy admin system for specialty lines in

**1009****1011**

1 Canada.

2 Q. It uses Blaze Advisor?

3 A. Yes, for one of the functions.

4 Q. Among other technologies?

5 A. Among other technologies. That's correct.

6 Q. What was the e-mail?

7 A. The e-mail was Ramesh Pandey. Information fro the ChEAR

8 regarding the Broker Site application.

9 Q. What did Mr. -- what did he say in the e-mail?

10 A. He stated that according to the ChEAR that Broker Site

11 is -- it's an application for broker to get the information

12 about the policies or the claims, so they can serve their

13 clients.

14 Q. And does broker site use Blaze Advisor?

15 A. It does not use Blaze Advisor; however, it uses the

16 parts of the Evolution, which is using the Blaze Advisor.

17 Q. So Broker Site is an application that's used in Canada?

18 A. Correct.

19 Q. And the Broker Site application -- and a broker or agent

20 who uses the Broker Site application in the, in the Broker

21 Site application then inter -- is the word "interfaces" with

22 Evolution? What is the right word in how Broker Site uses

23 Evolution?

24 A. It gets the information from Evolution, policy

25 information or claims information. Part of it could be

1 A. As any of the technology, Blaze Advisor can be replaced.

2 So it could function without the Blaze Advisor.

3 Q. Exactly. It could function with a different application

4 that performs those functions.

5 A. Yeah.

6 Q. I guess what I'm trying to see is if you agree with me

7 that any particular application when it is a combination of

8 more than one technology?

9 A. Correct. One or more.

10 Q. One or more?

11 A. Or more.

12 Q. The reason that there is one or more technologies is

13 that the one or more technologies are all necessary for the

14 application to perform its intended functions?

15 A. Correct. I would --

16 Q. So this goes back to whether CSI Express is used on new

17 applications. You don't know one way or the other?

18 A. CSI Express is used for the new applications.

19 Q. Oh, it is?

20 A. Yes. It is for entering the new policies. Book,

21 binding, issue. That's a virtue of the policy admin system.

22 Q. So CSI Express will be -- for a new policy, CSI Express

23 is implemented?

24 A. New policies and maintenance of policies going forward.

25 Q. Okay. And then, of course, a renewal is also

**1010****1012**

1 information generated by the Blaze Advisor in Evolution.

2 Q. Okay. The purpose of -- the intended purpose or

3 function of Broker Site is its ability to draw information

4 from Evolution?

5 A. Correct.

6 Q. The point of the -- one of the purposes of the Broker

7 Site application is its ability to draw information from

8 Evolution?

9 A. Correct. Among other data sources.

10 Q. Among other data sources. Evolution being a policy

11 administration system that is used in Canada?

12 A. Correct.

13 Q. And Evolution being an application that uses Blaze

14 Advisor?

15 A. That is correct.

16 Q. Now, going back to Evolution, you mentioned that Blaze

17 Advisor provides -- Blaze Advisor supports a particular

18 function of Evolution. What is that function?

19 A. Underwriting guidance.

20 Q. And we talked -- you know, we said kind of much earlier

21 in the morning that these applications may use a number of

22 technologies in addition to Blaze Advisor?

23 A. That is correct.

24 Q. Okay. Is it also accurate to say that without Blaze

25 Advisor none of the applications function as intended?

1 implemented through CSI Express, including the automatic

2 renewal processing function?

3 A. Correct. Correct.

4 Q. That was -- okay. All right. And so now let's go back

5 to CSI Express in a new policy. In the processing of a new

6 application, and assuming that the policy type is within the

7 range of profitability indicator --

8 A. Yep.

9 Q. -- will profitability indicator be used in that new

10 application?

11 A. Correct. If it fits the model of box for the

12 profitability indicator.

13 Q. Got it. And when we spoke about DecisionPoint, we spoke

14 about using DecisionPoint for a new policy, you know. We

15 went through that.

16 A. A new quote. Correction. New quote.

17 Q. New quote.

18 A. Not a policy.

19 Q. Got it. New quote. So now with a new quote, it gets to

20 the customer, e-mail or snail mail. The customer says,

21 yeah, I want that, or tells the broker, yeah, I want that.

22 Then does DecisionPoint do anything after that?

23 A. No. Information from DecisionPoint, whatever quote is

24 entered into the CSI Express.

25 Q. So then it goes into the CSI Express?



**1013****1015**

1 A. Exactly. So DecisionPoint, just to make sure it's  
2 clear, is only for the quoting for the small book of  
3 business. No functionality is intended there.

4 Q. Let's take a policy that was originally issued,  
5 quoted -- quoted -- originally -- well, let me start over  
6 again.

7 Let's use a policy that -- again, using a  
8 DecisionPoint -- the customer accepts it, it goes into CSI  
9 Express. Now it's time for that particular policy to be  
10 renewed.

11 A. (Moves head in affirmative manner.)

12 Q. Is that a functionality of DecisionPoint to  
13 automatically renew?

14 A. No.

15 Q. Now CSI Express is used to support that policy?

16 A. Correct.

17 Q. Okay. So is it fair to say that DecisionPoint is only  
18 used for new applications?

19 A. For the new quotes, yes.

20 Q. For the new quotes. Understood. Because if that quote  
21 turns into a policy, then that goes into CSI Express, and  
22 then the administration of that policy and its renewals will  
23 be through CSI Express going forward?

24 A. Correct.

25 Q. Can you tell me anything further about how -- and my

1 for when you first got involved with the Blaze Advisor  
2 software?

3 A. I believe it was, to the best of my knowledge, early  
4 2007. Initial conversation happened around December  
5 probably, but my involvement was, I believe, either January  
6 or February.

7 Q. I've given you Exhibit 189 --

8 THE COURT: Mr. Hinderaker, if we might pause the  
9 video. Since we're turning to a new exhibit, this would be  
10 a convenient time to take our morning break.

11 Members of the Jury, be back, be ready to go at 15  
12 minutes to 11:00 on that clock. All right?

13 THE CLERK: All rise for the jury.

14 (Jury exits.)

15

16 (In open court without the Jury present.)

17 THE COURT: Be seated. Why don't the lawyers come  
18 on back in and be ready at 20 minutes to 11:00. We will  
19 deal quickly with the issue of the exhibits that are the  
20 subject of concern with Mr. Ghislanzoni's testimony.

21 Mr. Hinderaker, you be prepared, obviously, to  
22 tell me why they're relevant.

23 Ms. Godesky, tell me why they're irrelevant or  
24 prejudicial. All right?

25 MS. GODESKY: Thank you.

**1014****1016**

1 question was phrased in the context of CUW pulling  
2 information from CSI Express.

3 Can you tell me anything further about how CSI  
4 Express and CUW inter function, separate from who pulls data  
5 from whom?

6 A. To my knowledge, when policy is created in CSI Express,  
7 information is sent to -- limited policy information is sent  
8 to CUW, which would in turn allows the underwriter to  
9 provide, as I said before, notes, additional documents  
10 associated with that particular policy.

11 Q. Okay.

12 A. So that's a kind of the way I understood the  
13 functionality between CSI Express and CUW.

14 Q. Were you aware of Chubb having licensed Blaze Advisor  
15 when you started work?

16 A. Yes, I am.

17 Q. Okay. So when you started, what was your role relative  
18 to the Blaze Advisor software that Chubb had licensed?

19 A. When I started, I had no intention or -- I was hired not  
20 as the rules, but as a document developer.

21 Q. Mm-hmm (Yes).

22 A. However, part of my team was working on the Blaze  
23 Advisor, and my manager at that time proposed for me to get  
24 involved with the tool.

25 Q. Okay. Do you have a -- can you give us a time reference

1 THE COURT: We're in recess.

2 (Recess taken.)

3

4 (In open court without the Jury present.)

5 THE COURT: Be seated. All right. Let's deal  
6 with these exhibits, quickly, if we can.

7 Mr. Hinderaker, as I understand it, looking at  
8 them, it's not entirely clear that they all do, but I think  
9 they all do deal with AppCentrica; is that right?

10 MR. HINDERAKER: As well as DWS.

11 THE COURT: All right. Ms. Godesky, why are these  
12 irrelevant or unduly prejudicial?

13 MS. GODESKY: Your Honor, our objection is that  
14 it's improper to use these documents with Mr. Ghislanzoni.  
15 He is the chief enterprise architect at Chubb. He was a  
16 legacy ACE employee, meaning he did not join the  
17 organization until after the acquisition in 2016.

18 THE COURT: Okay.

19 MS. GODESKY: As you know, FICO took the position  
20 in correspondence to the Court before trial began, FICO does  
21 not agree that exhibits are admissible without a sponsoring  
22 witness who is able to lay proper foundation for each  
23 exhibit.

24 And then at the February 14th status conference,  
25 Your Honor said, "No document is being admitted except

**1017****1019**

1 through a witness, and the witness is going to have to be  
2 somebody who has knowledge or foundation for the document."

3 And so through the first eight witnesses in this  
4 trial, we planned our case based on FICO's objection and  
5 then the Court's directive.

6 And so last night FICO sent us a list of about 20  
7 different exhibits that they want to use with  
8 Mr. Ghislanzoni. He is our corporate representative, but he  
9 is not a 30(b)(6) deponent. He has not been educated on  
10 topics outside his personal knowledge.

11 So the group of e-mails that were submitted to the  
12 Court, there is an evidentiary issue separate and apart from  
13 foundation for one of them, but all of them predate his time  
14 at the company. He is not on any of them, and he can't  
15 speak to what happened. And it's completely prejudicial to  
16 be confronting our corporate representative with e-mails and  
17 asking him questions about things that he has no knowledge  
18 of.

19 Relatedly, Mr. Hinderaker also alluded to the fact  
20 that they want to try to use interrogatories with  
21 Mr. Ghislanzoni. They disclosed last night these are  
22 interrogatories that show various gross written premium  
23 levels run through certain applications. Mr. Ghislanzoni  
24 doesn't know anything about that. He wasn't involved in the  
25 process of running that data. And FICO took three or four

1 THE COURT: Right.

2 MR. HINDERAKER: And in terms of jumping the gun  
3 on the interrogatories, they also tell us when the  
4 applications -- when Blaze Advisor was no longer used. And  
5 this goes to our earlier conversation. We have to clean  
6 them up with all the --

7 THE COURT: Understood. Yes.

8 Okay. Let's bring in the jury.

9 By the way, one of the jurors informed me that  
10 they are perfectly happy with a 60-minute lunch break, so we  
11 will go to 60 minutes.

12 MR. HINDERAKER: I hope they don't shorten it up  
13 anymore.

14 THE COURT: We will be down to 10 minutes by the  
15 end of the week.

16 THE CLERK: All rise for the jury.

17 (Jury enters.)

18

19 (In open court with the Jury present.)

20 THE COURT: Be seated.

21 You may proceed, Mr. Hinderaker.

22 BY MR. HINDERAKER:

23 Q. I have given you Exhibit 189. It has the heading CSI IT  
24 Summit. I acknowledge that it bears a date of August 2006.  
25 Have you seen this before?

**1018****1020**

1 days of 30(b)(6) deposition testimony of multiple deponents  
2 on how that data was run, where it came from and what it  
3 means.

4 So if they wanted party admissions about, you  
5 know, those gross written premium numbers, they could have  
6 designated that deposition testimony. Apparently, they  
7 don't like the deposition testimony, so, instead, they would  
8 like to prejudice our case by confronting our corporate  
9 representative with rogue responses that he had no  
10 involvement of, no knowledge of and would be completely  
11 confused by.

12 THE COURT: Okay. Mr. Hinderaker, very briefly.  
13 You're going to have to lay foundation.

14 MR. HINDERAKER: Absolutely. So there will be --  
15 a foundation will be laid through Mr. Ghislanzoni. It will  
16 or it won't.

17 THE COURT: Okay.

18 MR. HINDERAKER: He testified at his deposition,  
19 "A decision was made to take a copy of the Canadian  
20 application and use it as a base to create an Australian  
21 application."

22 In his role as the architect overall, he was  
23 knowledgeable and participated in the decisions of how and  
24 when to remove Blaze Advisor. He is not testifying as a  
25 corporate representative or as a 30(b)(6), but as a person.

1 A. No.

2 Q. Okay. So when you picked up your involvement with Blaze  
3 Advisor, was this part of the background information --  
4 information that you reviewed?

5 A. At that point, no, it was not, because at that point in  
6 time the decision to use the Blaze Advisor was already made  
7 and the work on the project was already started. So my role  
8 at that time was a developer. So I was really boots on the  
9 ground to help with the development of Blaze Advisor.

10 Q. I see.

11 A. I was not an architect at that point of time.

12 Q. Mm-hmm. Who, who was the person leading the Blaze  
13 Advisor project in November of 2006?

14 A. Owen Williams who was one of the department managers at  
15 CSI. He was leading the Blaze Advisor project.

16 Q. We've handed you Exhibit 191.

17 A. Yes, I do.

18 Q. Okay. And from the metadata, I believe you were the  
19 author of that.

20 From the metadata, I believe you are the author of  
21 this. Would you agree?

22 A. Oh, yes.

23 Q. Okay. And what was the purpose of your creation of  
24 Exhibit 191?

25 A. After the success of the business rules project for the

**1021****1023**

1 ARP 2, the purpose of this document is to market the  
 2 business rules technology -- business rules across the  
 3 enterprise, across the Chubb.  
 4 Q. And that was the purpose. And what was the goal to be  
 5 achieved from that purpose?  
 6 A. We thought that using the business rules can bring the  
 7 benefits to the IT teams across the Chubb. So the goal is  
 8 as they become familiar, they would start implementing or  
 9 using the business rules technology that is making their  
 10 life simpler.  
 11 Q. Okay. So the -- was there a benefit to -- separate from  
 12 the simpler life of the underwriters, was there a benefit to  
 13 the business that you were advancing?  
 14 A. Benefit would be, from my view, would be quicker  
 15 turnaround of the projects; thus, we can deploy the business  
 16 requests significantly quicker, as was demonstrated by the  
 17 ARP 1 project.  
 18 Q. And from your point of view, what was the benefit to the  
 19 business when you were able to do that?  
 20 A. Again, the changes or business changes can be deployed;  
 21 thus, whatever benefit is intended for that particular  
 22 implementation can be achieved significantly faster.  
 23 Q. Does that mean then that new policies can be put to  
 24 market faster?  
 25 A. Not necessarily, but could be more precise guidance or

1 A. Okay.  
 2 Q. And you wrote Introduction and Scope 1.1?  
 3 A. Correct.  
 4 Q. All right. So you start that with, "The purpose of this  
 5 document is to illustrate." And then tell me what you mean  
 6 by, "Such as increasing agility to implement the business  
 7 change and reducing time to market the new products and  
 8 services."  
 9 First paragraph.  
 10 A. So we believed at the time of --  
 11 COURT REPORTER: I lost you.  
 12 THE WITNESS: Sorry. I believed at the time I  
 13 wrote this document that implementation of the business  
 14 rules technology --  
 15 MR. FLEMING: I'm sorry. I thought you were  
 16 saying 40.  
 17 BY MR. HINDERAKER:  
 18 Q. Let's try again.  
 19 A. Yeah. So at the moment of writing this document, I  
 20 believed that use of the business rules technology would  
 21 enable IT team to deploy any business request to production  
 22 or to come to market significantly faster as compared with  
 23 traditional technologies employed at Chubb at a that point  
 24 in time.  
 25 Q. Say what?

**1022****1024**

1 more precise scoring for that particular example. It  
 2 doesn't necessarily impact the speed or increase on the  
 3 business.  
 4 Q. Let's back up a second. So the reason for having Blaze  
 5 Advisor is that it has an ultimate benefit for the business.  
 6 A. Correct.  
 7 Q. Correct?  
 8 A. Ultimately, yes.  
 9 Q. Yes, ultimately. And one of the benefits of, I think  
 10 that you just said, is that it makes people lives easier?  
 11 A. Correct.  
 12 Q. Correct? And the people that you're referencing are the  
 13 underwriters?  
 14 A. No. I'm referencing the IT teams because they're  
 15 ultimately responsible. Again, I'm talking -- my role was  
 16 from the IT perspective.  
 17 Q. Okay.  
 18 A. I would not be able to speak for any business benefits  
 19 achieved through the use of the Blaze Advisor technology or  
 20 business rules technology. I do speak around the  
 21 benefits -- that's what I speak in this document, is where  
 22 the business rules technology could benefit from the IT  
 23 point of view.  
 24 Q. Anyway, that's what I said. 4 of 42 and Bates number  
 25 0004.

1 A. It increases the agility of the project and increases --  
 2 and reducing time to market.  
 3 Q. It increases the agility of the business?  
 4 A. Agility of implementation. Again, as you can see  
 5 specifically here, it is agility to implement to business  
 6 changes.  
 7 So I'm not speaking to the business benefit for  
 8 this. This specifically says if I have a request from the  
 9 business to implement particular change, I can deploy it, I  
 10 can implement it significantly faster and deploy it  
 11 significantly faster for business to use.  
 12 Q. As a consequence, as you say, that reduces the time to  
 13 market for new products and services, correct?  
 14 A. If it's implemented in the Blaze Advisor. Again, big  
 15 disclaimer.  
 16 Q. And you just, you just, you just said the phrase, "if  
 17 implemented in Blaze Advisor."  
 18 And I want to turn you to the next page. And you  
 19 have a heading, "What are business rules?" And then you  
 20 have a description, you know, four paragraphs down,  
 21 "Traditionally embedded" -- "traditionally embedded inside  
 22 code." And then you say -- and then you have the next  
 23 paragraph, "Externalizing the business rules to be a  
 24 structured decision management."  
 25 Is that what you're meaning by if Blaze Advisor is

**1025****1027**

1 used because it externalized the business rules?  
 2 A. Correct. And that is how it was marketed to us by FICO  
 3 when we bought the tools.  
 4 Q. And then -- let's see. And then on the same page at the  
 5 bottom, "Enhance business performance by." And Number 1 is,  
 6 "Increasing Analytical Ability."  
 7 Over time, can you tell me how Blaze Advisor  
 8 applications were used to increase analytical ability?  
 9 A. Profitability indicator is an example of such  
 10 application which provides the ability to determine the  
 11 severity of the risk as underwritten by Chubb.  
 12 Q. Okay. And then Number 2, Automate Decisions by, and  
 13 then it says, "Automating High-Volume, Low-Risk Decisions."  
 14 Is that a component of -- tell me what applications of Blaze  
 15 Advisor used that.  
 16 A. DecisionPoint.  
 17 Q. How about Automatic Renewal?  
 18 A. Automatic Renewal -- it renews all the policies, so I  
 19 wouldn't qualify it as low risk. It's entire book of  
 20 business, whereas DecisionPoint is for specific low-risk,  
 21 high-volume business.  
 22 Q. And then II is "Establishing Uniform Decisions Across  
 23 Multiple Functions, Channels and Business Touch Points."  
 24 What applications using Blaze Advisor did that?  
 25 A. Essentially, again, profitability indicator, because it

1 A. I prepared the deck in collaboration with Michael Sawyer  
 2 from FICO.  
 3 Q. Okay. All right. Let me just go to the Bates number  
 4 57208?  
 5 A. 50208.  
 6 Q. The second page.  
 7 A. Yep.  
 8 Q. And there is this quote from Donald Light. Why did you  
 9 include that quote in the presentation?  
 10 A. I felt that the term "business rules" was used a little  
 11 bit loosely. People do not realize or do not have complete  
 12 understanding about what the business rules really is versus  
 13 the term of "decision business" and "decision-making  
 14 process" is a better illustration or a better terminology  
 15 for the technology itself. I think it's gives the people  
 16 better insight into that.  
 17 Q. And is that because as a consequence of the business  
 18 rules application, it enables a company to make decisions?  
 19 A. Yes. Same as wrote in the EcoSystem document. Better  
 20 uniform decisions.  
 21 Q. Let me turn to the next page, 209. And, again, these  
 22 are your statements in the slides?  
 23 A. Correct.  
 24 Q. All right. So we don't need to read them to each other.  
 25 But under the Potential Future Applications, there is a

**1026****1028**

1 is used in many different places. Automatic Renewal, CSI  
 2 Express, DecisionPoint. That's an example of uniform  
 3 decision about the risk.  
 4 Q. It would be separate from profitability indicator. Is  
 5 this also true for the underwriting guidance for CSI  
 6 Express?  
 7 A. Underwriting guidance is developed -- yes, it is correct  
 8 in terms of application. But since it speaks about multiple  
 9 functions and touch points, decision points, my view at  
 10 least, it's a better example.  
 11 Q. Okay. CSI Express and underwriting guidance does  
 12 establish underwriting decisions?  
 13 A. Correct. But in context of one application decision is  
 14 not shared across anywhere else.  
 15 Q. This is Exhibit 192 for the record. It's a cover e-mail  
 16 having a subject line of "Creating and Managing Business  
 17 Rules, CoE, Henry Mirollyuz, Chubb," dated 9/16/2009, and  
 18 then the attachment bearing Bates numbers FICO0057207  
 19 through 57222, bears as a title "FICO Forum: Decision  
 20 Management Tools User Group, September 16-18, 2009." It  
 21 includes on the title page, "Henry Mirollyuz, technical  
 22 analyst, business rules CoE, Chubb."  
 23 Do you recall this presentation, Mr. Mirollyuz?  
 24 A. Yes, I do.  
 25 Q. Okay. Did you prepare this entire deck?

1 heading, Cross/Upselling?  
 2 A. Yes.  
 3 Q. Was that application implemented during your time at  
 4 Chubb?  
 5 A. Not to my knowledge. It was considered, as you can see  
 6 it here, but I don't believe it was implemented.  
 7 Q. Would it have been a functionality of CSI Express?  
 8 A. Correct.  
 9 Q. And then the next header is Predictive Models. Was that  
 10 implemented at CSI Express -- was that implemented at Chubb?  
 11 A. Yes, it was. Profitability indicator.  
 12 Q. And if we go to the next page, 57210, you're giving a  
 13 case study of Automated Renewal I?  
 14 A. Correct.  
 15 Q. Thank you. And in this, with respect to Automated  
 16 Renewal I on this slide, the overall business goal is to  
 17 increase the percentage of automated renewal submissions.  
 18 Was that accomplished?  
 19 A. Correct. Yes, it was.  
 20 Q. And it goes on to say that the policies that are  
 21 automatically renewed, the more time the underwriter has to  
 22 develop and produce additional business or handle  
 23 additional -- produce additional business or handle  
 24 additional business. And that also was achieved?  
 25 A. I believe it was.

**1029****1031**

1 Q. And then there a header, "Objectives/Benefits, and  
2 Reach." Were those achieved as well?  
3 A. I cannot say if it was completely achieved or not.  
4 Q. I'm sorry?  
5 A. I cannot say if it was completely achieved or not. It  
6 was the goal to achieve those benefits. But was it achieved  
7 100 percent? I'm not sure. I cannot speak to that.  
8 Q. Okay. Do you know if it was achieved to some extent?  
9 A. To some extent, yes, it was.  
10 Q. You have been handed Exhibit 196.  
11 COURT REPORTER: 193.  
12 BY MR. HINDERAKER:  
13 Q. I'm sorry. 193. Thank you. And an Introduction to  
14 Business Rules, Improving Performance Through Decision  
15 Management. And you, sir, are one of the presenters; is  
16 that right?  
17 A. That is correct.  
18 Q. And do you recall --  
19 A. Oh, yes.  
20 Q. -- the context of this? What was it?  
21 A. It was a presentation on one of the forums which was  
22 hosted by FICO to talk about the business rules and Chubb  
23 experience in particular.  
24 Q. All right. So this was an external presentation outside  
25 of Chubb?

1 Q. And my question is: From the deployment of Blaze  
2 Advisor and the particular Blaze Advisor applications at  
3 Chubb, can you describe for me how the Chubb Blaze Advisor  
4 applications align with these five points?  
5 A. I'm not sure I follow the question the way it's stated.  
6 Q. Let me say it this way: Blaze Advisor applications that  
7 were implemented by Chubb aligned with the -- made  
8 decisioning more precise?  
9 A. So again, Profitability Indicator, as I said before, is  
10 a great -- is an example of precise decision to identify  
11 high-risk policies or customers.  
12 Q. And Chubb's implementation of Blaze Advisor applications  
13 made decisioning more consistent?  
14 A. For the lines which were implemented. So the Blaze  
15 Advisor for Profitability Indicator.  
16 Q. That's another example?  
17 A. Yep.  
18 Q. CSI Express is another example?  
19 A. CSI Express, again, is too in general, but Blaze  
20 component is used for a specific line of -- as I said  
21 before, specific line of business. So for those implemented  
22 for Blaze, yes, it makes decisioning much more precise.  
23 Q. And then another dimension of decisioning is agility.  
24 And you mentioned that in your earlier slides --  
25 A. Correct.

**1030****1032**

1 A. Yes.  
2 Q. Then the next -- the next page has the next slide,  
3 Business Rules Overview, CoE, October of 2009. Are you the  
4 author of the slides that follow that?  
5 A. If my recollection is correct, it was a collaborative  
6 effort, so we all work. I mean, I would have provided the  
7 information, but we all worked on all the presentations all  
8 together.  
9 Q. Is it accurate to say that you were one of the  
10 collaborators on this entire set of slides?  
11 A. Correct.  
12 Q. So you had an input into all of the slides?  
13 A. Yep. At least I was able to review it and provide the  
14 feedback, if necessary.  
15 Q. If you disagreed, you could say so?  
16 A. Yeah.  
17 Q. If you would go to the Bates number that has 0012 as its  
18 ending.  
19 A. Okay.  
20 Q. You'll actually get the original 12 of this slide as  
21 well. You see that slide bears the heading, "What is  
22 Decision Management? FICO's Point of View."  
23 A. Yep.  
24 Q. And then it has five dimensions of Decision Management?  
25 A. (Moves head in affirmative manner.)

1 Q. -- as one of the benefits of Blaze Advisor, deploying  
2 Blaze Advisor?  
3 A. Correct. We were able to implement the changes quicker  
4 than what we were able to do it before.  
5 Q. And another dimension of using Blaze Advisor is speed to  
6 market. You were able to accomplish some of that?  
7 A. Correct.  
8 Q. And if you would -- the e-mail itself is 5/27/15, but  
9 then the e-mail has 5/21/15, just to be clear.  
10 And if you would go to the e-mail Bates numbered  
11 5271, looking at that profitability indicator. And,  
12 Mr. Mirolyuz, are you the author of this slide?  
13 A. I could have provided the information for that slide.  
14 However, I don't recall if I was the author or Mike created  
15 the slide himself.  
16 Q. So whether your fingers touched the keys or not, the  
17 information on the slide is your information?  
18 A. Correct.  
19 Q. And then on the top left corner is the heading  
20 "Initiative," and it lists various objectives, benefits?  
21 A. Correct.  
22 Q. And are you listed -- and then under the bottom left,  
23 there's another cell, "Plus/Delta," and then under Plus it  
24 says, "The defined business benefit was realized."  
25 A. Correct.

**1033****1035**

1 Q. Let's go to the next slide. And this one is talking  
 2 about DecisionPoint, correct?  
 3 A. Correct.  
 4 Q. Okay. And, again, you list in the Initiative cell four  
 5 business benefits to be achieved by the DecisionPoint  
 6 application?  
 7 A. Correct.  
 8 Q. And then under Plus/Delta, you state that, "The defined  
 9 business benefit was realized"; is that correct?  
 10 A. That is correct.  
 11 Q. Can you just tell us -- maybe we know, but what's the  
 12 meaning of real-time quotes and bindable quote letter?  
 13 A. That we can provide -- as requested, we can provide the  
 14 quotes in real-time. They don't have to wait for -- the  
 15 customers don't have to wait overnight to get a quote. They  
 16 can receive it -- real-time is not absolutely correct. It's  
 17 near real-time but within a reasonable time frame.  
 18 Q. Do you know if Chubb has -- I'm just talking the big  
 19 company Chubb -- undertaken the analysis to quantify the  
 20 business value which is realized from Blaze Advisor  
 21 applications?  
 22 A. I cannot speak one way or another. I'm looking from the  
 23 technical perspective. As I said before, the decision  
 24 regarding using Blaze was already made before I started at  
 25 Chubb.

1 is specifically that team.  
 2 Q. That team. All right.  
 3 So that's to whom it was presented. And then why  
 4 was it being presented?  
 5 A. Again, to inform them -- to develop the strategy and as  
 6 well as a future roadmap in regards to the use of the  
 7 Business Rules technology at Chubb.  
 8 Q. Okay. And are you the author of the entire document  
 9 then?  
 10 A. With the input of information from others, but yes, I am  
 11 the one who compiled it.  
 12 Q. So it's fair to say, this is your document?  
 13 A. Yes.  
 14 Q. All right. If we could go to page 11, please, and that  
 15 slide has a header, "2015 Business Rules Projects at Chubb  
 16 (Active)." Are we on the same page?  
 17 A. Yes.  
 18 Q. All right. So the first line is "Corp" and then "PARS."  
 19 Do you recall that?  
 20 A. Correct.  
 21 Q. What is it?  
 22 A. It's a CBS, corporate -- it's a Premium Booking. So the  
 23 name acronym was the PARS, and we called it CBS, Corporate  
 24 Business Division.  
 25 Q. Is Premium Booking and Corporate PARS the same thing?

**1034****1036**

1 Q. You have Exhibit 195. It says, "Chubb Enterprise  
 2 Architecture - Business Rules Strategy/Roadmap."  
 3 A. Yeah.  
 4 Q. I will just represent that the metadata suggests this is  
 5 a July 21, 2017, document with yourself as the author. Do  
 6 you recall it?  
 7 A. Yes, I do.  
 8 Q. Okay. What was the purpose of this document,  
 9 Exhibit 195?  
 10 A. The purpose of this document is to summarize the  
 11 strategy around the business or provide a strategy in a  
 12 future roadmap regarding the business rules for the Chubb at  
 13 the Enterprise level.  
 14 Q. Is this an internal presentation to Chubb?  
 15 A. Correct. Specifically it is limited to the Chubb  
 16 Enterprise Architecture. So it's not even presented to the  
 17 broader audience. It's specifically intended for the  
 18 Enterprise Architecture team.  
 19 Q. The Enterprise Architecture team, is that speaking of --  
 20 speaking to IT personnel who have Enterprise-wide  
 21 responsibilities?  
 22 A. In Chubb -- all Chubb architects. All the architects  
 23 were the Enterprise architects. It was not separated by the  
 24 business unit, so anybody who had the title "architect"  
 25 would be considered to be the Enterprise architect. So this

1 A. Yes, it is the same thing.  
 2 Q. And that project was completed per this slide?  
 3 A. Correct.  
 4 Q. Okay. And why did you choose DecisionPoint and  
 5 Profitability Indicator as the applications to highlight in  
 6 the presentation?  
 7 A. Profitability Indicator was our first attempt to  
 8 implement predictive models, risk assessment in Blaze. By  
 9 itself, it was an interesting project, and people had raised  
 10 an interest on how we did it and the benefit of using it.  
 11 Q. Mm-hmm (Yes).  
 12 A. DecisionPoint was the project which we were using the  
 13 latest and greatest in terms of lessons learned and  
 14 experiences. So we developed, actually in collaboration  
 15 with working with FICO as well, some assistance there,  
 16 application using --  
 17 (Court reporter asked for clarification.)  
 18 THE WITNESS: -- agile methodologies.  
 19 MR. FLEMING: Agile.  
 20 BY MR. HINDERAKER:  
 21 Q. Is that what you mean, agile, A-G-I-L-E?  
 22 A. Yeah.  
 23 Q. Agile methodologies?  
 24 A. Yeah. And we were -- I mean, it was -- again, a number  
 25 of capabilities implemented in the DecisionPoint was



**1037****1039**

1 essential. As an architect, it was interesting for the  
 2 people to know.  
 3 Q. Okay.  
 4 A. So essentially, this touched on all the capabilities  
 5 which people were interested in at that point in time as an  
 6 architect.  
 7 Q. Do we agree that Blaze Advisor aligns with each of the  
 8 business objectives that are bullet-pointed on the slide?  
 9 A. Can you repeat the question again? I apologize.  
 10 Q. That Blaze Advisor aligns with, supports, achieves each  
 11 of the business objectives that are on that slide?  
 12 A. I cannot speak for everything on here. This slide was  
 13 actually provided by FICO to me to propagate the use of the  
 14 technology, so this is the business objectives as FICO  
 15 defines them.  
 16 Q. Understood. Understood.  
 17 And then on the last page, Blaze Advisor Roadmap,  
 18 what is this? What does this tell us?  
 19 A. This is the information provided by FICO, more  
 20 specifically Michael Sawyer --  
 21 Q. Mm-hmm (Yes).  
 22 A. -- to me to illustrate the roadmap of a new  
 23 functionality in Blaze Advisor so I can educate people in  
 24 Enterprise Architecture team around what is upcoming with  
 25 FICO down the line. Again, with a disclaimer that it's not

1 I was asked to provide my feedback on Blaze  
 2 Advisor as the technology I was mostly familiar with. I  
 3 provided the information to -- as you can see in the e-mail,  
 4 to Ramesh Pandey. And based on this information, he and his  
 5 team, whatever team he was working on, was making a decision  
 6 in terms of which technology is applicable going forward.  
 7 As you can see from the e-mail, Blaze Advisor was  
 8 chosen at that point in time as the going-forward technology  
 9 for the combined Chubb organization.  
 10 Q. If you go a couple of pages into the document, there is  
 11 a series of slides, and it begins with a header  
 12 "Cross-Divisional TDA, Technology Tool Due Diligence and  
 13 Recommendations."  
 14 If I understood your answer correctly -- well, let  
 15 me just put it this way, were you a part of preparing any of  
 16 these slides?  
 17 A. Not the slides itself. The slides, I believe, were  
 18 prepared by Ramesh Pandey or somebody on his team. I was  
 19 the one who provided information around the Blaze Advisor,  
 20 which went to the slides around those.  
 21 Q. And then you were not part of the decision-making  
 22 process of which way to -- what technologies to choose on  
 23 the integration?  
 24 A. I could only provide my recommendation. It was up to  
 25 the senior leadership to make those types of decisions.

**1038****1040**

1 guaranteed.  
 2 Q. Is DecisionPoint a web quote solution?  
 3 A. It's a solution -- it's an old name. Web Quote is the  
 4 old name of the DecisionPoint. It was re-branded as  
 5 DecisionPoint.  
 6 Q. Okay. The customer -- you mentioned the customer could  
 7 fill out the application and the hard copy gets sent in?  
 8 A. Correct.  
 9 Q. The customer can also fill out the application online?  
 10 A. I don't believe so. To my knowledge, no. There was no  
 11 customer-facing application.  
 12 Q. Let me show you what has been marked as Exhibit 151. Do  
 13 you acknowledge that this is an e-mail from Miranda Chang to  
 14 yourself on April 14th, 2016?  
 15 A. Yes, I am.  
 16 Q. As it says, she says, "See attached Technology of Choice  
 17 for Business Rules = Blaze" and then a smiley face?  
 18 A. Correct.  
 19 Q. What was the context she is sending this to you, do you  
 20 know?  
 21 A. As part of the merger between Chubb and ACE, we went  
 22 through the portfolio application -- not application --  
 23 tools portfolio on both of the organizations to determine  
 24 going forward which technology stays or which technology  
 25 will be deprecated or eliminated from the list.

1 Q. You have now Exhibit 199. Can you identify that for us,  
 2 please?  
 3 A. 199 looks like a slide deck from the Interact 2007  
 4 conference.  
 5 Q. And what is Interact?  
 6 A. I believe, if I recall correctly, it's a conference  
 7 which was hosted by Fair Isaac for the users and the  
 8 developers of Blaze Advisor software.  
 9 Q. And did you present at that with this program or with  
 10 this talk?  
 11 A. I don't recall me presenting this slide deck. I could  
 12 have been, or it could have been my manager who would have  
 13 presented it.  
 14 Q. All right. And your manager at that time was whom?  
 15 A. Owen Williams.  
 16 Q. Owen Williams. All right.  
 17 Do we agree that this is a slide deck that either  
 18 yourself or Owen Williams prepared and presented at a FICO  
 19 conference?  
 20 A. Yes.  
 21 Q. Was the functionality of adding and removing and  
 22 replacing enhancement endorsements -- or adding, removing  
 23 and replacing endorsements part of the functionality of  
 24 ARP 2?  
 25 A. Yes, it was.

<p style="text-align: right;"><b>1041</b></p> <p>1 Q. Can you identify Exhibit 204, please?</p> <p>2 A. Premium Booking Modernization Senior Leadership</p> <p>3 Presentation.</p> <p>4 Q. Were you part of preparing this set of slides?</p> <p>5 A. No, I was not.</p> <p>6 Q. Have you seen it before?</p> <p>7 A. Let me take a look.</p> <p>8 Q. Yeah, sure.</p> <p>9 A. No, I do not. I'm not part of the leadership team.</p> <p>10 Q. Do you have any doubt that this was a set of slides</p> <p>11 presented to the senior leadership team at Chubb?</p> <p>12 A. I cannot say one way or the another. It looks authentic</p> <p>13 but, again, I cannot say one way or another.</p> <p>14 Q. All right. Can you identify for us, please,</p> <p>15 Exhibit 216?</p> <p>16 A. It is an e-mail from Cristian Vasilache.</p> <p>17 Q. And the attachment?</p> <p>18 A. The attachment is a report, a ChEAR software report,</p> <p>19 application report.</p> <p>20 COURT REPORTER: Report -- I'm sorry. What?</p> <p>21 THE WITNESS: Application report.</p> <p>22 BY MR. HINDERAKER:</p> <p>23 Q. And this ChEAR report -- you've described to us earlier</p> <p>24 what a ChEAR report is. Is this another version of that</p> <p>25 report?</p>	<p style="text-align: right;"><b>1043</b></p> <p>1 for the Broker Site.</p> <p>2 Q. Okay. So to be consistent with your earlier testimony,</p> <p>3 you would say that this entry that has Blaze Advisor 6.9</p> <p>4 having been used for Broker Site is wrong?</p> <p>5 A. Correct. Therefore, I would assume that why it was</p> <p>6 eliminated.</p> <p>7 Q. So you have Exhibit 218?</p> <p>8 A. Yes, I do.</p> <p>9 Q. And this is another -- another version of an Amy Bell --</p> <p>10 Business Analyst Amy Bell's statement for Solution Analysis</p> <p>11 for DecisionPoint - Add Coverage?</p> <p>12 A. Correct.</p> <p>13 Q. Kind of a normal document you got in your work at Chubb?</p> <p>14 A. Yes, that's --</p> <p>15 Q. This is -- that's already been marked. I'm sorry. This</p> <p>16 is Exhibit 168. The metadata says that you are the author</p> <p>17 and that it is -- has a date of May 20, 2015.</p> <p>18 Do you recall building this set of slides,</p> <p>19 "Overview of Business Rules" --</p> <p>20 MR. FLEMING: I'm sorry. Can you give the date?</p> <p>21 MR. HINDERAKER: What?</p> <p>22 MR. FLEMING: Can you give the date?</p> <p>23 MR. HINDERAKER: I did.</p> <p>24 MR. FLEMING: Would you mind repeating that?</p> <p>25 MR. HINDERAKER: May 20, 2015.</p>
<p style="text-align: right;"><b>1042</b></p> <p>1 A. Yes, it looks like.</p> <p>2 Q. And if we go one, two, three, four, five -- if you go</p> <p>3 six pages in, it would be the first page of the tables?</p> <p>4 A. Okay.</p> <p>5 Q. Again, as we saw in an earlier document, there are some</p> <p>6 entries that are in red. For example, on the first page,</p> <p>7 Broker Site, Technology Blaze Advisor, and I think it says</p> <p>8 version 6.9 all in red, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And is that meaning that it's running on version 6.9 and</p> <p>11 it's due to be upgraded to 7.1, or what does that mean?</p> <p>12 A. I believe in that particular case it means that that</p> <p>13 version will be eliminated. If you read on the same line --</p> <p>14 Q. Yes.</p> <p>15 A. -- next after 6.9, it says "eliminate."</p> <p>16 Q. Okay. What is being eliminated?</p> <p>17 A. The use of the Blaze Advisor technology, however it was</p> <p>18 used or not. If the technology was listed for that</p> <p>19 application, mistakenly or not, this means it will be</p> <p>20 eliminated to either correct or the technology is no longer</p> <p>21 being used.</p> <p>22 Q. Okay. Do you know if Blaze Advisor -- let me back up.</p> <p>23 Was Blaze Advisor used for Broker Site before</p> <p>24 elimination?</p> <p>25 A. Not -- I don't have any knowledge of Blaze Advisor used</p>	<p style="text-align: right;"><b>1044</b></p> <p>1</p> <p>2 BY MR. HINDERAKER:</p> <p>3 Q. Do you recall building a set of -- a slide deck called</p> <p>4 "Overview of Business Rules in DecisionPoint"?</p> <p>5 A. Yes.</p> <p>6 Q. And what was the context or purpose of this deck?</p> <p>7 A. To provide an overview of implementation of the Business</p> <p>8 Rules in DecisionPoint application.</p> <p>9 Q. And you presented this overview to whom?</p> <p>10 A. Internal Chubb IT team.</p> <p>11 Q. Okay. And why did you present it to the internal Chubb</p> <p>12 IT team?</p> <p>13 A. Because I felt that success of this project, in terms of</p> <p>14 implementation, at the time it implemented, is something I</p> <p>15 should showcase to the IT team as well as highlight benefits</p> <p>16 of the business rules.</p> <p>17 Q. Okay. So is it fair to say you're the author of the</p> <p>18 entire document?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. If an "account round" means to be able to add</p> <p>21 endorsements or consider the adding of endorsements to an</p> <p>22 application, do you know that that functionality is part of</p> <p>23 DecisionPoint?</p> <p>24 A. DecisionPoint already had functionality to add and</p> <p>25 remove endorsements. So --</p>

**1045****1047**

1 Q. Okay.

2 A. -- it could have been. Again, I don't want to speculate

3 in terms of what the -- what Amy meant by account round.

4 Q. Okay.

5 A. Since it's a business goal, I have no knowledge of that.

6 Q. In light of your earlier testimony about CUW, how is

7 Blaze Advisor a key technology?

8 A. As I said before, CUW is a suite of tools. One of the

9 tools inventory management is using the Blaze Advisor.

10 Thus, this statement is absolutely correct.

11 THE COURT: All right. Mr. Hinderaker, call your

12 next witness.

13 MR. HINDERAKER: Mr. Ghislanzoni. Take a moment,

14 Your Honor, and get the binders set up.

15 THE COURT: Mr. Ghislanzoni, if you will raise

16 your right hand as you have.

17 (Witness sworn.)

18 THE WITNESS: I do.

19 THE COURT: Go ahead and be seated. Turn your

20 microphone on and make sure you speak into it.

21 State your full name for the record.

22 THE WITNESS: Claudio Ghislanzoni.

23

24

25

1 A. I am.

2 Q. All right. Now, you were, as we just mentioned, on the

3 ACE side at the time of the acquisition, and you were aware

4 that acquisition had been announced and would be happening

5 directly?

6 A. Correct.

7 Q. And I understand from your IT background that one of the

8 consequences of a merger is to consolidate technologies?

9 A. That's a very important activity in IT.

10 Q. Very important activity, did you say?

11 A. Important activity, yes.

12 Q. Yeah. And the purpose, of course, is that in a merger

13 of two companies, it's a goal to eliminate the duplication

14 of the same assets?

15 A. Where appropriate, yes.

16 Q. And you were involved, as I understand it, on the ACE

17 side of looking at, from your point of view, which assets to

18 eliminate because it would be duplicate, and it would be

19 appropriate to eliminate them?

20 A. Yes. One important activity I took on the leadership of

21 as part of the integration was to look at software products

22 legacy ACE and legacy Chubb, Federal, and define together

23 with my team a new set of standards for the new enterprise.

24 Q. Were you aware -- the merger, the acquisition, had

25 closed. Were you aware in March, the end of March of 2016,

**1046****1048**

1 (Claudio Ghislanzoni)

2 CROSS-EXAMINATION

3 BY MR. HINDERAKER:

4 Q. Let's see here. Good morning still.

5 A. Good morning.

6 Q. I understand that -- let me just give the jury a sense

7 of your employment background. I understand that you're the

8 chief enterprise architect for the Chubb Group?

9 A. Correct.

10 Q. All right. And you, in terms of -- we've heard many --

11 well, you have been here all trial, and so everybody knows

12 about the Chubb Corporation being acquired by ACE Limited.

13 And your legacy, that is to say you came from the

14 ACE Limited side, correct?

15 A. I did.

16 Q. And as chief enterprise architect by the title, I

17 imagine we all kind of simply assume that your

18 responsibilities are the architectural function, correct?

19 A. That is correct.

20 Q. And your responsibilities are, as I understand it,

21 they're global?

22 A. Global.

23 Q. So are you the, as being the chief enterprise architect,

24 are you the head? You're the top enterprise architect for

25 the global, what is now Chubb Limited?

1 that FICO had terminated the Blaze Advisor license agreement

2 that Chubb & Son, the division, had?

3 A. I was not.

4 Q. When did you become aware that FICO had terminated the

5 Chubb & Son Blaze Advisor license.

6 A. At trial.

7 Q. At trial?

8 A. Yes.

9 Q. Just now?

10 A. In preparation to the trial.

11 Q. Okay. Were you aware -- were you aware during the time

12 that you were considering the -- well, let me come back to

13 that. I will come back to that.

14 It's fair to say or it's correct to say that in

15 2016, you were involved and started the discussion around

16 the options and standardization of the parts -- the options

17 and standardization, what technologies to use going forward

18 in the new company?

19 A. Yes.

20 Q. And in 2016, you were in that assessment. You were

21 assessing what technologies to use instead of Blaze Advisor?

22 A. We were looking at all the different technologies.

23 Blaze Advisor was one of the technologies we assessed.

24 Q. And you were assessing the other technologies so that

25 you could make a decision about what to use instead of Blaze

**1085****1087**

1 read this document and I see Blaze Advisor 7.1, it says,  
 2 that's the version being used. And when it says leveraged,  
 3 that's confirming that it is being used, correct?  
 4 A. I did not produce this document.  
 5 Q. Understood. I didn't say you did. I'm just asking if  
 6 you read it the same way I do.  
 7 A. So what I can tell you about ChEAR is a repository where  
 8 we were recording existing application information and  
 9 potential future ones.  
 10 Q. Okay. And whether it's a future one, we just look at  
 11 other information to see if it's already existing, right?  
 12 A. I cannot tell you how it was identified in this  
 13 spreadsheet. I was not part of --  
 14 Q. Stepping back from not being the author or participant  
 15 in creating it --  
 16 A. Sure.  
 17 Q. -- we have other people testify to that. As the  
 18 architect in the company if you are reading this document  
 19 and it says leveraged, you would interpret that as Blaze  
 20 Advisor 7.1 is being used?  
 21 A. I would be guessing the intention of the author.  
 22 Q. You don't want to -- okay. You don't want to read it.  
 23 All right.  
 24 The next portion of questioning that I would like  
 25 to go into with you is to identify the dates on which your

1 Seventh Supplemental Answer to Interrogatory Number 19;  
 2 1002, which is the Seventh Supplemental Answer to  
 3 Interrogatory 18.  
 4 And I would -- I request that they be admitted  
 5 into evidence as the verified interrogatory answers, and  
 6 then we will, in terms of submitting the document for the  
 7 record, take out what I'll call the lawyer-eze and have  
 8 simply the facts.  
 9 MS. GODESKY: That's fine, subject to the  
 10 redaction issue that we discussed. And I think there's  
 11 content in these documents that goes beyond --  
 12 THE COURT: The foundation?  
 13 MS. GODESKY: Yes.  
 14 THE COURT: And specifically in 1007, the graph at  
 15 the top half of that page is such a portion, correct?  
 16 MS. GODESKY: Yes, that's what I have in mind.  
 17 MR. HINDERAKER: Is what?  
 18 THE COURT: The graph on page 5 of 1007, the graph  
 19 above the two bullet points, the objection is that it's  
 20 beyond the foundation of the witness.  
 21 MR. HINDERAKER: I don't quarrel with that. It  
 22 is.  
 23 THE COURT: Okay.  
 24 MR. HINDERAKER: It's not my intention to go into  
 25 any of that.

**1086****1088**

1 use of Blaze Advisor ceased and you substituted in the  
 2 Drools application.  
 3 And why don't you -- we'll go slow for a minute  
 4 here. And so if you would turn to Exhibit 1007.  
 5 A. Okay. 1007.  
 6 Q. Yep. And you will see the title Non-Supplemental Answer  
 7 to Plaintiffs Interrogatory Number 7. Why don't you go to  
 8 page 5.  
 9 A. Page 5.  
 10 Q. Please.  
 11 A. Okay.  
 12 Q. And you will see there's two bullet points, and the top  
 13 bullet point starts CSI Express?  
 14 A. I can see.  
 15 Q. Okay. And then there's -- I won't read it yet, but then  
 16 there's a sentence that speaks about when the Blaze Advisor  
 17 component was removed. Do you see that?  
 18 A. You are reading the first paragraph?  
 19 Q. First bullet point, last sentence, "the Blaze Advisor  
 20 component was removed."  
 21 A. I can read the sentence, yes.  
 22 Q. Okay. Good.  
 23 MR. HINDERAKER: Your Honor, I would like to offer  
 24 into evidence Exhibit 1007, which is the Non-Supplemental  
 25 Answer to Interrogatory Number 17; 1008, which is the

1 THE COURT: Yep. Understood.  
 2 So for purposes of displaying it to the jury, if  
 3 you can redact that graph on page 5, let me know when you've  
 4 done that.  
 5 MR. MAYLEBEN: Good, Your Honor.  
 6 THE COURT: Okay. So subject to those objections  
 7 and that redaction, 1002, 1005, 1007 and 1008 are received.  
 8 MS. GODESKY: Your Honor, I'll just state for the  
 9 record I think those other exhibits have similar issues.  
 10 THE COURT: The same issues, yep.  
 11 MS. GODESKY: Yes.  
 12 MR. HINDERAKER: And no dispute about that either.  
 13 Agreed.  
 14 BY MR. HINDERAKER:  
 15 Q. So now we can go through this with a little bit of  
 16 speed, maybe.  
 17 So if we look at Exhibit 1007, I pointed you to  
 18 that first bullet point. We can agree that Blaze Advisor  
 19 component was removed from the version of CSI Express,  
 20 automated renewal process and profitability indicator, on or  
 21 about January 17, 2020, right?  
 22 A. This is what the document says.  
 23 Q. That's all we can do. That's right.  
 24 And then if we, if we -- with respect to  
 25 DecisionPoint, is it your recollection that DecisionPoint

**1089****1091**

1 was replaced by Drools in the first half of 2020?

2 A. I can't recollect exactly, but by end of April, 2020,

3 DecisionPoint for sure had been removed from Blaze usage.

4 Q. Good. And I should have just pointed you to page 3 of

5 the same exhibit. Just put -- yep.

6 The Blaze Advisor component was removed from the

7 version of DecisionPoint used by the financial lines unit on

8 or about April 10, 2020.

9 A. Right.

10 Q. And then let's go to back to page 5 and talk about ARP.

11 So we touched on that already. It was taken out at the same

12 time as CSI Express, on January 17, 2020. Agreed?

13 A. That's what the document says.

14 Q. I know. And then on page 9.

15 When we're talking about CUW at the top of the

16 page, the Blaze Advisor component was removed from the

17 version of CUW in early November, 2019. That's what that

18 says there, correct?

19 A. I can see that, yes.

20 Q. All right. And then if we stay on this same page for

21 TAPS, we're going to know that it is -- the document says

22 Blaze Advisor was removed from the version of TAPS used by

23 the Chubb Commercial Insurance business unit in late

24 April -- sorry -- in late third quarter or early fourth

25 quarter 2019.

1 THE COURT: Hang on a second. Can we do the

2 redaction on that page as well, please?

3 Sorry, Mr. Hinderaker.

4 MR. HINDERAKER: Yeah, we should.

5 Just the bullet point. There we go.

6 BY MR. HINDERAKER:

7 Q. The Blaze Advisor software component was removed from

8 the Evolution application described above on or about

9 September 27, 2019. I read that right, I hope?

10 A. Yes.

11 Q. Okay. And then let's go to Exhibit 1002.

12 A. 1002.

13 Q. Got it. Defendants' Seventh Supplemental Answer to

14 Interrogatory Number 18. I'm interested in EZER. So if we

15 can go to page 4.

16 And Blaze Advisor component was removed from the

17 version of EZER used by UK Federal on or about March 29,

18 2019. That's what it reads?

19 A. Yes.

20 Q. And then let's go to Exhibit 105.

21 A. 105?

22 Q. 105. And this is Defendants' Seventh Supplemental

23 Answer to Plaintiff's Interrogatory Number 20. And if you

24 would go to page 6.

25 A. I'm on page 6.

**1090****1092**

1 That's what that says?

2 A. Yes.

3 Q. Okay. And then if we go to page 10, the bullet point at

4 the bottom for IRMA?

5 A. I can see.

6 Q. The Blaze Advisor component was removed from the version

7 of IRMA used by Chubb Commercial Insurance business unit in

8 either the summer or early fall of 2019. That's what it

9 says?

10 A. Yes.

11 Q. And then let's go back to page 6. For premium booking,

12 kind of in the middle of the page, page 6?

13 A. Yes.

14 Q. You're there, but the screen isn't, so we will wait a

15 second.

16 Page 6.

17 Okay. Well, we can read it. Premium booking used

18 by corporate business systems was removed on or about

19 April 17, 2020, correct?

20 A. That's what is stated, yes.

21 Q. Okay. Good. If you would go to Exhibit 1008, please.

22 A. Okay.

23 Q. This is the Seventh Supplemental Answer to Interrogatory

24 19. And if we go to page 3, we're told the Blaze Advisor

25 component --

1 Q. Page 6, please. First bullet point.

2 Blaze Advisor component was removed from the

3 version of Adapt used by CEG SE. That's Europe, correct?

4 A. Yes.

5 Q. And Chubb Insurance Company of Australia on or about

6 January 27, 2019. That's what it reads?

7 A. Yes.

8 Q. Okay. Thank you for that.

9 Let's go to Australia.

10 You know that, that in -- we're going to go to

11 Australia, but we're got going to start off in Canada. You

12 know that in Canada there was an application called

13 Evolution that used Blaze Advisor.

14 A. Yes.

15 Q. And you know that the decision was made to take a copy

16 of the Canadian application and use it as a base to create

17 an Australian application, which ended up also having the

18 name Evolution, correct?

19 A. Yes. That was correct.

20 Q. And the copy of the Canadian application with Blaze

21 Advisor was the starting point for the Australian specific

22 application. Agreed?

23 A. That was the intention.

24 Q. Yes. And at the end of the day, the Blaze Advisor --

25 I'm sorry. At the end of the day, the application that was

**1093****1095**

1 used in Australia called Evolution had a rules engine of  
 2 ODM?  
 3 A. Yes.  
 4 Q. So for that, for the Australian application called  
 5 Evolution, the Blaze Advisor component that was in it was  
 6 removed, and then ODM was put into its place?  
 7 A. What I can tell you is, I believe in first person, I  
 8 engaged with the Australian team in 2016 and facilitated the  
 9 adoption of ODM as the rules engine for the application.  
 10 Q. Okay. And so to put the -- I'm just making the simple  
 11 point, I think, that if you start off with Canadian  
 12 Evolution with that with Blaze Advisor is what you start  
 13 from, to get to the end point you first have to remove Blaze  
 14 Advisor and then put in ODM.  
 15 A. I cannot tell you if that is what happened.  
 16 Q. Okay. Well, then let's, let's go back to 105 -- 1005.  
 17 And this is the Seventh Supplemental Answer to Plaintiff's  
 18 Interrogatory Number 20.  
 19 And if you would go to page 4.  
 20 A. I'm on page 4.  
 21 Q. Page 4? Got it?  
 22 And there's a bullet point in the middle. It  
 23 starts off the A&H business?  
 24 A. The A&H business unit, yes.  
 25 Q. And then a couple sentences in it reads, "Indeed Blaze

1 Q. Okay. And did you know that she was working with a  
 2 consultant in Canada called AppCentrica in connection with  
 3 this project?  
 4 A. When I met with Zorica, I remember her mentioning  
 5 AppCentrica being one of the consultants they were using in  
 6 Canada.  
 7 Q. And in terms of the work being done by Chubb Australia,  
 8 you were aware that Chubb Australia was using a consultant  
 9 in connection with this project called DWS Group?  
 10 A. Yes, I was aware of that.  
 11 Q. And by "this project," I'm talking about the project of  
 12 creating the Australia Evolution application from the  
 13 Canadian Evolution application. We're on the same page?  
 14 A. Yes.  
 15 Q. Okay. Would you go to the exhibit in your notebook  
 16 called 526.  
 17 A. 526, yes.  
 18 Q. I'm not as quick as you are. All right. There we go.  
 19 And Exhibit 526 is one where you happen to be on  
 20 the email chain. It's from Hamish Tonkin to Russell Hodey  
 21 and yourself, among others. Agreed?  
 22 A. Yes.  
 23 Q. As it bears the date of May 12, 2016.  
 24 A. Yes.  
 25 Q. And Russell Hodey is a Chubb representative out of Chubb

**1094****1096**

1 Advisor was replaced with IBM operational decision  
 2 management before Blaze Advisor ever went live in  
 3 Australia."  
 4 Did I read that right?  
 5 A. That's what this document says. First time I see it.  
 6 Q. Fair enough. I'm not trying to quarrel with you. This  
 7 is information I have from the lawsuit, and that's what it  
 8 says.  
 9 A. That's what is reading here.  
 10 Q. All right. Are you familiar with Zorica Todorovic?  
 11 A. I met Zorica at the time we started integration.  
 12 Q. Okay. And she's, she's out of Chubb Canada?  
 13 A. Yeah. She was IT lead CIO for Canada at the time.  
 14 Q. And she was part of the process of taking the Evolution  
 15 application with Blaze Advisor as it was in Canada and  
 16 transferring that to Australia for ultimately the  
 17 development of the Australian application called Evolution?  
 18 A. Yeah. I cannot tell you if that is an accurate  
 19 statement. I was not directly involved in that activity.  
 20 Q. Did you know that she was involved in that activity?  
 21 A. I know she owned the Evolution application in Canada.  
 22 Q. Okay. And you know that she was a senior vice president  
 23 operations of IT and chief information officer for Chubb  
 24 Insurance of Canada.  
 25 A. Yes.

1 Australia?  
 2 A. Yes.  
 3 Q. And Hamish Tonkin is out of the European zone of Chubb.  
 4 A. Yes. Hamish Tonkin was a legacy Chubb architect working  
 5 in the UK, in England.  
 6 Q. And the subject matter of this email is Re: Changing  
 7 Rules Engine Software. Agreed?  
 8 A. Yes.  
 9 MR. HINDERAKER: I don't think there's an  
 10 objection to this exhibit, but I do offer it, Your Honor.  
 11 MS. GODESKY: No objection.  
 12 THE COURT: Exhibit 526 is received.  
 13 BY MR. HINDERAKER:  
 14 Q. And the attachment, Rules Engine Matrix, if you would go  
 15 to Exhibit 527, the next one.  
 16 A. 527, yes.  
 17 Q. And that's -- we're on the same page that Exhibit 527,  
 18 the Rules Engine Matrix, is the attachment to, excuse me,  
 19 Exhibit 526, the email.  
 20 A. This doesn't say that, but --  
 21 Q. If you look at -- go ahead. If you look at the Bates  
 22 number that's produced in the litigation, the number for the  
 23 email is FED013893. The number for the attachment  
 24 FED013894, just the next number.  
 25 A. Understood. Thank you.



**1097****1099**

1 Q. So we can be in agreement that it's the attachment.  
 2 A. It's the attachment.  
 3 Q. All right. Thank you.  
 4 And this email is speaking like in the Hamish  
 5 Tonkin to Russell Hodey from Australia. In the second  
 6 paragraph, he says -- the subject matter again being  
 7 changing rules engine software.  
 8 He says, Blaze is fine for multiple operands and  
 9 parent/child/chaining/rete, as we don't want to develop this  
 10 sort of functionality into something we are building from  
 11 scratch.  
 12 He reads that, right?  
 13 A. So you are on the second paragraph?  
 14 Q. That I am, yes.  
 15 A. I can see that yes.  
 16 Q. Okay. I read that right?  
 17 And then on the bottom of that page it referenced  
 18 that Russell Hodey has been -- again, the email on the  
 19 bottom of the page, Russell Hodey to yourself, May 12, 2016,  
 20 Hodey is saying, "Having discussed this further with  
 21 Martin," you understand Martin is Martin Sill of DWS?  
 22 A. Yes.  
 23 Q. The solution architect at DWS and then he goes on to  
 24 suggest some proposals, including that DWS will continue to  
 25 explore Drools.

1 Q. But you see that her email address is at Chubb.com?  
 2 A. Yes.  
 3 Q. Any doubt that Julia Perle is also a Chubb Canada  
 4 person?  
 5 A. I don't remember Julia Perle.  
 6 Q. All right. All we know is her email address is at  
 7 Chubb.com, right?  
 8 A. Yes.  
 9 Q. And the subject is Evolution Transition, and then the  
 10 attachment is Knowledge Transfer Schedule.  
 11 And the subject matter is the Evolution transition  
 12 that we've been talking about already, Canada Evolution to  
 13 Australia, right?  
 14 A. Well, this is an email was produced in 2015.  
 15 Q. I know that.  
 16 A. Legacy Chubb.  
 17 Q. I agree.  
 18 A. So I was not part of that engagement.  
 19 Q. I know. And I'm not suggesting that you were. But you  
 20 do know that Zorica Todorovic is Chubb?  
 21 A. Yes, I know that.  
 22 Q. And you do know that there was an effort to transition  
 23 Blaze Advisor knowledge from Canada Evolution to Australia  
 24 Evolution. You know that too?  
 25 A. I see this email for the first time.

**1098****1100**

1 That was happening at that time?  
 2 A. Yeah. DWS proposed the use of Drools, but we agreed  
 3 that ODM was the technology to be adopted, and that  
 4 happened.  
 5 Q. All right. Good.  
 6 And then on the last page of the email, it has the  
 7 number FED013893\_002?  
 8 A. Yes.  
 9 Q. Martin is saying that he's going to pull together some  
 10 brief notes on how rules are implemented in Blaze currently  
 11 and saying it's very straightforward and he's going to  
 12 report on that.  
 13 Agreed?  
 14 A. That's what he's saying in the email.  
 15 Q. Okay. Thank you.  
 16 And then let's go to, let's go to Exhibit 1060.  
 17 A. 1060?  
 18 Q. Yep, 1060.  
 19 A. Okay.  
 20 Q. And you will see that it's from Zorica Todorovic who  
 21 you've identified already.  
 22 A. Yes.  
 23 Q. Chubb Canada. It's to a Julia Perle. Did you get a  
 24 chance to meet her too?  
 25 A. No.

1 Q. I understand that. Do you have any reason to think this  
 2 email isn't exactly what it purports to be, an email between  
 3 these people about the Evolution transition and the  
 4 knowledge transfer schedule?  
 5 A. I can tell you what is in the email.  
 6 Q. Okay. And let me just continue with some on this line.  
 7 And also on the email is Mr. Hodey at Chubb.com,  
 8 and you've told us that he's Chubb in Australia, correct?  
 9 A. Chubb Australia, yes.  
 10 Q. Yes. That's what I said, Chubb Australia.  
 11 And then on the email as well is Martin Sill at  
 12 DWS.com, and you identified Martin Sill as a DWS consultant  
 13 working with Chubb Australia, correct?  
 14 A. That is correct.  
 15 Q. And the subject matter again is Evolution Transition,  
 16 correct?  
 17 A. Correct.  
 18 MR. HINDERAKER: Your Honor, I offer Exhibit 1060  
 19 as an authenticated admission.  
 20 MS. GODESKY: Objection on foundation.  
 21 THE COURT: Sustained.  
 22 BY MR. HINDERAKER:  
 23 Q. Would you go to Exhibit 1169, please.  
 24 A. 1169.  
 25 Q. Yeah.

**1105**

1 for his authenticity for making, giving the foundation,  
 2 we're getting off track --  
 3 For showing the authenticity of those documents,  
 4 then the documents are admissions. I'm not suggesting, and  
 5 I haven't suggested, that Mr. Ghislanzoni has first-hand  
 6 knowledge of foundation to speak to these, but I can read  
 7 their admissions from authenticated documents.

8 THE COURT: I understand.

9 MR. HINDERAKER: Okay.

10 THE COURT: I think in fairness to Federal, I  
 11 think they need the opportunity to look at the case law that  
 12 you're citing. I think as I'm hearing it, I don't think you  
 13 need to use the exhibits themselves with the witness. They  
 14 can -- if they're admissible, then they will come in either  
 15 on their own because of the affidavit or through another  
 16 witness, the emails.

17 MR. HINDERAKER: The reason I -- I wasn't going to  
 18 do this right away, and the reason I went to it was when  
 19 Mr. Ghislanzoni identified all the people on the email --

20 THE COURT: Right.

21 MR. HINDERAKER: -- and I know he's not, he's not  
 22 one of them. He identifies all the people on the email.  
 23 There's no reason to think it's not exactly what it says it  
 24 is. And I offered it, and it was refused.

25 I said, well, I am going to find more foundation

**1106**

1 to show the subject matter of this email, the knowledge  
 2 transfer, is what he already knows about some, and this  
 3 brings us into AppCentrica and DWS a little bit deeper. If  
 4 he authenticated the email and the attachment that came from  
 5 Chubb Canada, I'm not going to ask him his first-hand  
 6 knowledge about it. He doesn't have it.

7 I'm just going to read the admissions that are in  
 8 Chubb's own documents.

9 MS. GODESKY: Your Honor, this is exactly what  
 10 FICO took the position we could not do, get documents into  
 11 evidence through witnesses who have no foundation to talk  
 12 about. And that has been the rule since the first day of  
 13 trial.

14 And what's happening here is, FICO did not take  
 15 depositions during discovery of Russ Hodey, even though he  
 16 was identified; Zorica, even though she was identified.  
 17 They chose not to take those depositions. They don't have  
 18 the evidentiary record that they need, and now they are  
 19 trying to shoehorn it in through someone who didn't even  
 20 start working at the company until after these emails were  
 21 authored.

22 He's admitted and he will testify that he has some  
 23 knowledge about what happened with Evolution Australia,  
 24 starting in spring 2016. But to try to use him as a vehicle  
 25 to get in the documents from 2015 that he was never on, he

**1107**

1 didn't participate in the conversations, again, when you can  
 2 look back at the correspondence that FICO sent the court,  
 3 they said this shouldn't happen, and the court said we  
 4 couldn't use documents with witnesses who couldn't lay a  
 5 foundation.

6 MR. HINDERAKER: And this man is going to lay the  
 7 authenticity through the document. I'm not asking his  
 8 personal knowledge. And, you know, Zorica is one of those  
 9 witnesses that we had yet another motion about, and the  
 10 defendants had her on the witness list. The defendants were  
 11 going to bring her to trial. Then they were going to take a  
 12 deposition.

13 I mean, it would have been easier for me if she  
 14 would have showed up, but that isn't in my control.

15 MS. GODESKY: It would have been easier for us,  
 16 too, but there's no power to compel her at that point, but  
 17 they could have taken a deposition earlier and so --

18 MR. HINDERAKER: My point is there's no reason to  
 19 blame around, either way.

20 MS. GODESKY: I'm not blaming anyone.

21 MR. HINDERAKER: We're dealing with the question  
 22 of -- I mean, the law is clear, in my judgment. If he can  
 23 authenticate that the document, email, is what it purports  
 24 to be and, he's already told me that the attachment connects  
 25 to the email, then that's all I need.

**1108**

1 It is an authentic record of the defendants, and  
 2 it's an admission.

3 THE COURT: I don't know that he can. I don't  
 4 think he has.

5 MR. HINDERAKER: Well, I know that he has already  
 6 agreed with me that the attachment is with the email. I  
 7 haven't gotten through your judgment that the email is an  
 8 authentic document produced in this litigation from Chubb.

9 THE COURT: Right. Well --

10 MR. HINDERAKER: And actually I don't know what  
 11 more I can because all of the, you know, he identifies the  
 12 people on it except for Perle and --

13 THE COURT: I haven't had an opportunity to read  
 14 the declaration of Zorica. What does it say, basically?

15 MR. HINDERAKER: Basically, we work with  
 16 AppCentrica, AppCentrica access to Blaze Advisor off of our  
 17 virtual desktops, and then AppCentrica was part of the work  
 18 with DWS. It's fairly high level. It's fairly high level.

19 THE COURT: Okay.

20 MS. GODESKY: He doesn't know anything about that,  
 21 Your Honor.

22 MR. HINDERAKER: I agree with you. He doesn't.

23 MS. GODESKY: So this is not the right witness.

24 THE COURT: Well, I agree with Federal. I don't  
 25 think -- well, I don't think currently we've gotten the

**1109****1111**

1 foundation for the admission of the email with the  
 2 attachment.  
 3 Go ahead and lay more foundation if you can.  
 4 MR. HINDERAKER: If I can.  
 5 THE COURT: And on the affidavit we can deal with  
 6 that later. And you're welcome to show him the affidavit,  
 7 but I don't know that that's -- I mean, he hasn't seen it  
 8 presumably. He can't testify to its accuracy.  
 9 MR. HINDERAKER: And I wouldn't ask him to.  
 10 THE COURT: Right.  
 11 MR. HINDERAKER: Its accuracy is the admission the  
 12 defendants have presented to the court as accurate.  
 13 THE COURT: It doesn't strike me, to be honest  
 14 with both of you, that the question of whether AppCentrica  
 15 had Blaze or had access to Blaze and used it as a consulting  
 16 tool Chubb Canada is terribly in dispute.  
 17 MS. GODESKY: We did not object when  
 18 Mr. Hinderaker showed the interrogatory response agreeing  
 19 with that in his opening.  
 20 MR. HINDERAKER: It's not terribly undisputed.  
 21 These documents will -- they say, for example, this will get  
 22 the source code to DWS, that much. It's a bit more than,  
 23 it's a bit more than DWS was in the same room as Blaze  
 24 Advisor as DWS, we're going to get the source code to DWS.  
 25 MS. GODESKY: My objection is, Your Honor, this

1 game. But if he's not aware of it, he's not aware of it.  
 2 And you have a basis for asking it.  
 3 MR. HINDERAKER: I do. And my, what I lose -- I  
 4 will do that, but what I lose in the process is, to use one  
 5 of the defendants' own documents as an admission.  
 6 THE COURT: I understand. I understand.  
 7 (In open court)  
 8 THE COURT: Mr. Ghislanzoni, you will have to turn  
 9 your microphone back on. There you go. Thanks.  
 10 BY MR. HINDERAKER:  
 11 Q. Well, let's just cover a little ground that we've  
 12 already covered, but I need to do it to get back into a  
 13 context. Okay?  
 14 A. Okay.  
 15 Q. So if we go to Exhibit 526, this is the email that you  
 16 are on. It's in evidence, and the subject matter is  
 17 Changing Rules Engine Software. And then the email, excuse  
 18 me, the email below -- well, the email above has Martin Sill  
 19 at DWS.comAU and then the email below Russell Hodey at  
 20 Chubb.com to yourself.  
 21 And then there's a discussion with Martin and DWS,  
 22 and as you said already, there was some exploration by DWS  
 23 into whether Drools would be a substitute for the Evolution  
 24 application in Australia, but ultimately the decision was to  
 25 go to ODM.

**1110****1112**

1 witness was not involved in DWS and AppCentrica vis-à-vis  
 2 Blaze, and so to have our corporate representative  
 3 questioned about correspondence he can't conceptualize, it's  
 4 just not fair.  
 5 MR. HINDERAKER: Well, again, I don't -- he's  
 6 already testified to his general, his knowledge about that  
 7 transfer. He's already testified he met with Zorica. He's  
 8 not a 30(b)(6) deposition. He's a human being witness in  
 9 the trial.  
 10 MS. GODESKY: Sure.  
 11 THE COURT: Right. And you're welcome to explore  
 12 it further with him.  
 13 MR. HINDERAKER: All right.  
 14 THE COURT: Again, he, I think he's testified  
 15 about his knowledge, once he came on board, about DWS and  
 16 AppCentrica, has he not?  
 17 MR. HINDERAKER: Yeah, he has. And there's emails  
 18 that are going to be after his onboarding. I mean, the one  
 19 I'm working with now is earlier in time, but he comes on  
 20 board, and he's part of the transition out, and then there's  
 21 other emails that are after, later in time.  
 22 THE COURT: Okay. Well, I think the "are you  
 23 aware" question is fair game.  
 24 MR. HINDERAKER: I'm sorry. What?  
 25 THE COURT: The "are you aware" question is fair

1 So that's -- you agree with that? All right?  
 2 A. Yeah, I agree with the fact that we selected ODM, and we  
 3 utilized ODM.  
 4 Q. Right. Okay. So then let me -- and you are also, you  
 5 also know, you said, that Chubb Canada was working with a  
 6 consultancy called AppCentrica.  
 7 A. What I know that, Zorica, when I met her first time as  
 8 part of the integration, mentioned that AppCentrica was one  
 9 of the consultancy that they were utilizing in Canada.  
 10 Q. Okay. So I think we're on the same page.  
 11 And if you would go to, go to Exhibit 16A, please.  
 12 A. Sorry. Could you repeat the number?  
 13 Q. Sure. 0016A.  
 14 A. Okay. I'm there.  
 15 Q. And on this email it is from Robert Lokinger, and his  
 16 address is at AppCentrica.com, correct?  
 17 A. I can see that in the email.  
 18 Q. You don't disagree with that, do you?  
 19 A. It's written on this paper.  
 20 Q. All right. And the email is to Zorica Todorovic at her  
 21 email address at Chubb.com?  
 22 A. That's what the email shows.  
 23 Q. Yep. And then the email shows it also goes to another  
 24 person who is from from AppCentrica Ken Kitamura, I think.  
 25 Agreed?

**1113****1115**

1 A. Yeah, it shows that.  
 2 Q. And the subject is SOW for Discussion Tomorrow. Do you  
 3 see that?  
 4 A. I can see it.  
 5 Q. And do you understand SOW means statement of work?  
 6 A. Yes, I do.  
 7 Q. All right. And the attachment is Arch, A-R-C-H, that  
 8 stands for architect?  
 9 A. First time I see this email.  
 10 Q. No. I know it is. I know it is. I'm not --  
 11 A. Okay.  
 12 Q. I'm not pretending otherwise. I'm just asking you what  
 13 it looks like, what it is.  
 14 A. I can read arch.  
 15 Q. Okay. Arch PLD project, right?  
 16 A. I don't know.  
 17 Q. Okay.  
 18 A. I would be guessing.  
 19 Q. Well, can you read arch PLD, SOW?  
 20 A. Yes.  
 21 Q. All right. Then go to Exhibit 16.  
 22 A. 16.  
 23 Q. Yeah, please.  
 24 A. Yes.  
 25 Q. And you see that this, the front page of this document,

1 program, the project name is Arch PLD," same as on the front  
 2 page of the document, right?  
 3 A. That's what it says, yes.  
 4 Q. You do know that after your, after the merger, you do  
 5 know from your involvement in that, Zorica and AppCentrica  
 6 were working in Canada together, and you know that  
 7 AppCentrica -- I'm sorry -- and you know that Evolution  
 8 Canada was being transferred to Australia.  
 9 And you know that AppCentrica was working with  
 10 Chubb Canada for that project, right?  
 11 A. The last part I didn't know. I don't know. I don't  
 12 have evidence. You are showing me a document that describes  
 13 an SOW, but I did not know.  
 14 Q. Is there anything in this SOW, Exhibit 16, that looks to  
 15 you to be not an authentic document of AppCentrica?  
 16 A. What I can tell you is what I see in the document, has  
 17 an AppCentrica name and a logo.  
 18 Q. Do you believe it to be an AppCentrica statement of  
 19 work?  
 20 A. That's what it says.  
 21 Q. Okay. And when you look at the earlier email, 16A, you  
 22 agree that Rob Lokinger was transmitting to Zorica Todorovic  
 23 this statement of work. And if you look at the Bates  
 24 numbers, the email is 6836, and the estimate of work is  
 25 6837.

**1114****1116**

1 it is from AppCentrica?  
 2 A. Yes.  
 3 Q. Agreed? And the title of the document is Chubb Arch PLD  
 4 Project, right?  
 5 A. Yes.  
 6 Q. And the title on the email was Chubb -- was Arch PLD,  
 7 SOW, right?  
 8 A. Yes.  
 9 Q. And the front page of Exhibit 16 says Statement of Work,  
 10 right?  
 11 A. Yes.  
 12 Q. And I know you're not there at the time, but this  
 13 document says Statement of Work from AppCentrica, correct?  
 14 A. It does.  
 15 Q. And then if you go to page 3 where it says Introduction?  
 16 A. Yes.  
 17 Q. Does it say, "The following document provides a  
 18 statement of work for the Evolution engagement in 2015 and  
 19 2016 between AppCentrica and Chubb Insurance Company of  
 20 Canada. The focus of the work to be completed by  
 21 AppCentrica over the next two years will be the design and  
 22 development of the Evolution system for Australia."  
 23 Agreed?  
 24 A. That's what it says.  
 25 Q. And it goes on to say, "This is funded by the ARC

1 A. Yes, I can see.  
 2 Q. And I will represent to you that this came to us in the  
 3 course of the litigation.  
 4 A. I understand.  
 5 Q. All right? And do you have any reason to believe this  
 6 is a record that was kept by Chubb Canada regarding this  
 7 project?  
 8 MS. GODESKY: Objection. No foundation.  
 9 MR. HINDERAKER: I didn't ask for his personal  
 10 knowledge. I just asked him if he had reason not to believe  
 11 it from all the indicia on the documentation.  
 12 THE COURT: I will sustain the objection as asked.  
 13 BY MR. HINDERAKER:  
 14 Q. Looking at everything on this, looking at everything on  
 15 the documentation in terms of whether it appears to be  
 16 authentic or not, do you have any reason to think that it is  
 17 not?  
 18 A. I was not involved in this activity.  
 19 Q. I understand that, sir. That wasn't my question.  
 20 My question is: If you look at these documents on  
 21 their face, from, to, subject matter, logos, statement of  
 22 works, introduction, about a project that you know happened,  
 23 do you have any reason to believe that this is not authentic  
 24 records from Chubb Canada?  
 25 MS. GODESKY: Objection. No foundation, mis

**1117****1119**

1 characterizes testimony.  
 2 THE COURT: Overruled.  
 3 THE WITNESS: So what I can tell you is, you're  
 4 showing me an email, and you are showing me a document that  
 5 is clearly an attachment of that email.  
 6 BY MR. HINDERAKER:  
 7 Q. Okay.  
 8 A. That says SOW. I can agree that that is what you are  
 9 showing to me.  
 10 Q. And can you agree that it, from everything on the  
 11 document, it appears to be the true thing that Zorica got  
 12 from AppCentrica?  
 13 A. I cannot comment beyond -- I cannot say anything more  
 14 than what I have already said is, you are showing me an  
 15 email and an attachment that was -- and I have in front of  
 16 me.  
 17 Now since I was not working with Zorica at the  
 18 time, I wouldn't have any additional information to --  
 19 Q. And, sir, I'm not going to ask you for additional  
 20 information. But we agree that the attachment, that the  
 21 attachment went with the email, right?  
 22 A. Yes, we agree.  
 23 Q. And we agree that Zorica was involved in a project. We  
 24 agree that Zorica worked with AppCentrica.  
 25 A. Yes.

1 Zorica's team in Canada.  
 2 Q. And this email is dated January 14, 2016, right?  
 3 A. January 14, 2016, yes.  
 4 Q. And this is beginning of your time in terms of the  
 5 integration of technologies, correct?  
 6 A. Yes.  
 7 Q. And the "to" is to Zorica Todorovic at Chubb.com. Do we  
 8 agree?  
 9 A. Yes. Yes.  
 10 Q. And do you know the cc's at Chubb.com?  
 11 A. No.  
 12 Q. Okay. And the forward and the subject matter is re:  
 13 Work Manager code, Handover January 14th?  
 14 A. Yeah, it says that.  
 15 Q. And the work manager code was the element of Canadian  
 16 application called Evolution that was being handed over to  
 17 Australia, correct?  
 18 A. I remember work manager code being a component of the  
 19 application.  
 20 Q. Of the Evolution application. I'm sorry. I spoke over  
 21 you. My bad.  
 22 You remember work manager being a component of the  
 23 Evolution application?  
 24 A. Yes.  
 25 Q. And you know that that component of the Evolution

**1118****1120**

1 Q. And we agree that AppCentrica -- we agree that Chubb  
 2 Canada transferred Evolution Chubb Canada to Chubb  
 3 Australia. Agreed?  
 4 A. We agree that a copy of Evolution was taken from Canada  
 5 for Australia.  
 6 Q. And that in Canada the consultancy that was being  
 7 worked, that was involved in that project was DWS?  
 8 A. DWS was in Australia.  
 9 Q. That's what I just said. We agree that DWS was in  
 10 Australia.  
 11 A. Yes.  
 12 Q. And we agree that AppCentrica was in Canada.  
 13 A. We agree AppCentrica was a consultancy in Canada, yes.  
 14 MR. HINDERAKER: Your Honor, I offer these  
 15 exhibits as authenticated and as admissions.  
 16 MS. GODESKY: There's no foundation, Your Honor,  
 17 and they're hearsay, unsigned documents.  
 18 THE COURT: Sustained.  
 19 BY MR. HINDERAKER:  
 20 Q. And now would you turn to Exhibit 900.  
 21 A. 900.  
 22 Q. Please.  
 23 A. Okay.  
 24 Q. Who is A. Pavlenko at Chubb.com?  
 25 A. If I remember correctly, Alex Pavlenko was a member of

1 application then was transferred to Australia?  
 2 A. Not at that level of detail. I would be able to tell  
 3 you that, as I mentioned earlier, that Evolution was the  
 4 starting point for the development, Evolution Canada as an  
 5 application was the starting point for the development of  
 6 Evolution Australia.  
 7 Q. And do you assume, as I do, that the full Evolution  
 8 application then from Canada was transferred to Australia?  
 9 A. I don't have the details behind it.  
 10 Q. And these emails also include on them references to, "I  
 11 will speak to Martin." And do you understand Martin is  
 12 Martin Sill at DWS Group?  
 13 A. Where do you see --  
 14 Q. On the first page, Zorica to Abad Dokht and another  
 15 person re: Work Manager Handover. "Thanks so much for the  
 16 constant updates, Alex. I will speak to Martin and see  
 17 where we go from there?"  
 18 A. Oh, I can see now. Yes.  
 19 Q. And you knew Martin as a DWS person because he was part  
 20 of the Drools analysis in Australia.  
 21 A. Yeah, I know there was an architect called Martin at DWS  
 22 Australia.  
 23 Q. All right. Good.  
 24 And then the second page of the email at the top  
 25 references the APZ team. Do you see that?

**1121****1123**

1 A. Yes.

2 Q. The APZ team is the Australian team, correct?

3 A. Yeah, that was a term referring to Asia Pacific zone.

4 Q. And then going back to the subject matter here, we're

5 talking about a code handover of work manager. Agreed?

6 A. That's the subject of the email.

7 Q. Okay. And so then I know you're not on the document. I

8 know you weren't part of these communications. My question

9 is to you, Isn't this an authentic document of emails in the

10 course of doing, being, in the course of being employees for

11 Chubb on this subject matter? Yes or no.

12 A. I can see this is an email.

13 Q. No, I didn't ask that. I asked is this an authentic

14 email between Chubb Corporation representatives on this date

15 with this subject matter. Yes or no.

16 A. I didn't produce these email.

17 Q. I didn't ask that question. Looking at this email, is

18 this an authentic email between these representatives of

19 Chubb regarding this subject matter on that date?

20 A. It looks authentic to me.

21 Q. Thank you.

22 I move the admission of Exhibit 900.

23 MS. GODESKY: Objection. No foundation.

24 THE COURT: Sustained.

25

1 your deposition.

2 A. Okay.

3 Q. Go to page, if you go to page 53.

4 A. 53?

5 Q. Well, I think we need to start on page 52 --

6 A. Okay.

7 Q. -- to give us some context.

8 MS. GODESKY: Objection, Your Honor. He said he

9 didn't understand the question, so I'm not sure why we're

10 going to a deposition.

11 MR. HINDERAKER: To try to refresh his

12 recollection.

13 THE COURT: All right. Have him read it to

14 himself then.

15 MR. HINDERAKER: So -- sure.

16 BY MR. HINDERAKER:

17 Q. Why don't you start at page 52, and start at line 24,

18 through 6.

19 A. Yes, I read.

20 Q. Okay. So I'll try to restate my question.

21 When you were considering, when you were

22 evaluating different options for decommissioning Blaze

23 Advisor, did you ever consider relying upon manual look-up

24 processes instead of rules engines?

25 A. So we looked at the rules engine technology for

**1122****1124**

1 BY MR. HINDERAKER:

2 Q. Moving to the topic, just identifying people,

3 Mr. Ghislanzoni. Is David Gibbs somebody at Chubb that you,

4 the name you recognize?

5 A. No.

6 Q. No? How about Tony Zhang? Do you recognize that name?

7 A. Sorry.

8 Q. Tony Zhang?

9 A. No.

10 Q. When you were thinking about moving technologies away

11 from Blaze Advisor, did you ever consider using a manual

12 look-up table as a substitute for a rules engine?

13 A. So when, when we looked at -- sorry. Is the question

14 related to Blaze Advisor?

15 Q. No. It's related to your decisional process to look at

16 technologies in substitution of Blaze Advisor. And as I

17 understand it, you had a goal which was to standardize

18 technologies, not eliminate technologies. Is that fair?

19 A. "Standardize" is a good term, yes.

20 Q. All right. And if you were causing the underwriters and

21 selling insurance to go back to the days of using a manual

22 look-up table, that would be eliminating technology, not

23 standardizing it, correct?

24 A. I don't understand the question.

25 Q. All right. Well, let's see if I can refresh it with

1 standardization. We considered the significant investment

2 in time and money that was made, millions of dollars, many

3 days, weeks, months, worth of effort to implement those

4 rules.

5 A natural progression, the easiest path, the most

6 logical, was to replace one rules engine with another if and

7 where required.

8 Q. Well, let me read what you said at the time of the

9 deposition.

10 "Question: And as part of your evaluation of

11 different options upon decommissioning Blaze Advisor, did

12 your team ever consider relying on manual look-up processes

13 instead of a rules engine?

14 "No.

15 "Why not?" Question.

16 "Answer: Our target in the options and evaluation

17 was to standardize technology, not eliminate technology."

18 Did I read that right?

19 A. That's correct.

20 Q. Would you go to Exhibit 526, please.

21 A. Yes.

22 Q. Thank you. And this is an email from Hamish Tonkin to

23 people, including yourself?

24 A. Yes.

25 Q. Russell Hodey as well. And the attachment is -- I'm



**1125****1127**

1 sorry.

2 The subject is Changing Rules Engine Software.

3 A. Yes.

4 Q. And the attachment is Rules Engine Matrix. Agreed?

5 A. Yes.

6 Q. And this is in May 2016. This is that time frame when

7 there was some evaluation going on by yourself and your team

8 with respect to what to do with rules engine technology,

9 correct?

10 A. That's correct.

11 Q. And so then I'd like to go to the -- I'd like to go to

12 the attachment.

13 And I believe, Your Honor, this is in evidence

14 already.

15 If we go to the attachment, the rules engine

16 matrix.

17 This attachment represents criteria for

18 consideration to determine the type of rules engine that may

19 be adopted. Agreed?

20 A. Yes, this matrix represent a set of guidelines.

21 Q. Okay. And we looked at some of this before with

22 Mr. Pandey, but I want to look at a different part with you.

23 But for our context, solution number two includes using open

24 source technology.

25 A. Yes, it says that.

1 coding if you would like.

2 But this professional coding is when IT

3 professionals write the rules directly into the software,

4 into the application, right?

5 A. Using programming language.

6 Q. Of course. Using programming language. And in the

7 vernacular, people will call that hard coding. Agreed?

8 A. There is that general utilization of that term in that

9 respect.

10 Q. Yeah. And that's how I was using it.

11 And solution number one on this matrix is giving

12 the pluses and minuses of the considerations that follow if

13 one were to use programming language and a professional and

14 write the rules right into the application, right?

15 A. This is very specific to these context that we were

16 evaluating, the Evolution context.

17 Q. Good. So then if we just look at solution number one,

18 what happens then under the factor atomic applicability,

19 what solution number one limits you to is the business rules

20 associated with the product or line of business are executed

21 in a single application. That's true?

22 A. That's what it says.

23 Q. Mm-hmm. And then let's just look at frequency of rule

24 modifications. For solution number one, which I've

25 vernacularly calling hard coding, the frequency of rule

**1126****1128**

1 Q. Yes. And then in solution number three includes or

2 references using vendor technologies, such as Blaze or Duck

3 Creek, right?

4 A. Yes.

5 Q. Okay. I'd like to focus my questions with you to

6 solution number one.

7 A. Yes.

8 Q. And it's titled, Application Subcomponent Rules Engine

9 (internally developed).

10 Is the information in this first column the

11 consideration of the pluses and minuses of what's termed

12 hard coding the rules into the applications?

13 A. Well, this matrix represents a set of guidelines for, to

14 be used as a starting point to design and architect an

15 application.

16 Q. No quarrel. My question was, as you considered the

17 different options and choices, solution number one is

18 considering, well, should we think about writing the rules

19 directly into the applications, what's called hard coding.

20 That's what solution number one is referencing,

21 correct?

22 A. Yeah. Hard coding is an interesting term. It's -- I

23 will call it pro coding, professional coding.

24 Q. All right. Well, we can call it professional coding. I

25 know you had that same issue -- we can call it professional

1 changes is less than once per quarter, per rule. That's

2 what it says?

3 A. That's what it says, yes.

4 Q. And we can look at solution two and solution three, and

5 in each instance the frequency of rule modifications

6 improves. Agreed?

7 A. Yeah. As you shift to the right, you consider more

8 frequency.

9 Q. Yep. And then scenario, the next heading, Scenario

10 Validation. The business has no requirements to be able to

11 perform "what if" analysis on the existing book of business

12 or potential rule changes.

13 That's a limitation of the so-called hard coding,

14 right?

15 A. Not necessarily.

16 Q. That's what it says on this document.

17 A. It just states that there wasn't a requirement to carry

18 out a what if analysis, not a limitation.

19 Q. You are assuming that in the application it's not

20 necessary.

21 A. Not necessary.

22 Q. If it was necessary, would you do hard coding or use a

23 vendor or open source?

24 A. It depends.

25 Q. One or the other, but not hard coding?

**1129****1131**

1 A. Professional programming, yeah. Programming in our  
 2 language can be used to achieve the same goal as a rules  
 3 engine, if this is what you are inferring.  
 4 Q. I am. And then let's look at the number of rules on the  
 5 second page.  
 6 If we are doing the hard coding, not to exceed  
 7 100. Is that what it says?  
 8 A. That's what it says.  
 9 Q. And if we are doing open source, not to exceed 400. Is  
 10 that what it says?  
 11 A. So second column is also -- yeah. Open source, yes.  
 12 Q. That's what I said.  
 13 A. That's the one, 400, yes.  
 14 Q. And then on the vendor, Blaze or Duck Creek, number of  
 15 business rules is estimated as large. And it goes on to  
 16 talk more about each product, a hundred plus calculations  
 17 and so on.  
 18 That's what the document says for that, correct?  
 19 A. Yes, that's what the document says.  
 20 Q. That was the analysis at the time.  
 21 A. Was a set of guidelines.  
 22 Q. Understood. I know. I know. I just wanted to know  
 23 what was being thought at the time and said.  
 24 I don't know if you know this, but let me ask. Do  
 25 you know how long -- okay. I won't -- I won't ask it. I

1 one application running ODM.  
 2 A. I don't remember the specifics of that.  
 3 Q. All right. And then ACE American did have one small  
 4 license with FICO that had nothing to do with -- nothing to  
 5 do with rules engine technology in connection with selling  
 6 insurance?  
 7 A. That is correct.  
 8 Q. Thank you.  
 9 A. Thank you.  
 10 THE COURT: Hang on a second.  
 11 MR. HINDERAKER: No further questions.  
 12 THE COURT: Thank you, Mr. Hinderaker.  
 13 Ms. Godesky, do you have some direct?  
 14 MS. GODESKY: I do.  
 15 THE COURT: All right. Just to let you know the  
 16 plan, we'll go about ten minutes and then take our afternoon  
 17 break.  
 18 MS. GODESKY: Terrific.  
 19 Your Honor, I'm told we need to switch the system.  
 20 THE COURT: Yep.  
 21 MS. GODESKY: Thank you.  
 22 DIRECT EXAMINATION  
 23 BY MS. GODESKY:  
 24 Q. Good afternoon, Mr. Ghislanzoni.  
 25 A. Good afternoon.

**1130****1132**

1 will find the information in the RFI, and that's well before  
 2 your time. Good.  
 3 So I want to, I want to thank you for your time,  
 4 and I just want to, I guess, I just want to, I guess, sum up  
 5 with, with this.  
 6 You said -- where did I have that note?  
 7 There was a time in September of 2016 where you  
 8 knew that the relationship with FICO had, I think your words  
 9 were, severely deteriorated. Do you recall that?  
 10 A. In 2016.  
 11 Q. September of 2016.  
 12 A. Yeah. 2016 I was, I was informed, I can't remember the  
 13 exact month, but I was informed by my superior that a  
 14 dispute had started between FICO and Chubb.  
 15 Q. And that being a fact, Blaze Advisor was not removed  
 16 from all of the applications until April 2020, right?  
 17 A. The last application, the last component, that is  
 18 correct.  
 19 Q. That's right. And then when you were doing an  
 20 evaluation to integrate technologies, there was a mention in  
 21 your, you mentioned that ACE American had one application,  
 22 and that one application was running ODM, right?  
 23 A. We had more than one application running ODM.  
 24 Q. Maybe I misspoke. In terms of looking at rules engine  
 25 technologies for the selling of insurance, ACE American had

1 Q. If you meet someone new in a professional setting, what  
 2 company do you say you work for?  
 3 A. Chubb.  
 4 Q. You testified during examination with Mr. Hinderaker  
 5 that you are the chief enterprise architect at Chubb,  
 6 correct?  
 7 A. I am.  
 8 Q. Very briefly, what does it mean to be an architect at  
 9 Chubb?  
 10 A. One way to describe being an architect, an IT architect,  
 11 could be drawing an analogy with a construction architect.  
 12 So a construction architect defines a blueprint of a  
 13 building and what materials are going to be used to create  
 14 the building.  
 15 In IT, an IT architect, enterprise architect,  
 16 defines the blueprint of the IT system of an enterprise and  
 17 which technologies, which software products to be used.  
 18 Q. In what country are you currently working?  
 19 A. In England.  
 20 Q. And you, you mentioned during questioning from  
 21 Mr. Hinderaker that your responsibilities are global. How  
 22 many people report to you?  
 23 A. Over 100 worldwide.  
 24 Q. And the jury has heard testimony from a Mr. Ramesh  
 25 Pandey, another Chubb architect. How do his

<p style="text-align: right;"><b>1133</b></p> <p>1 responsibilities relate to yours?</p> <p>2 A. So Ramesh Pandey is the chief architect for</p> <p>3 North America, and he is part of my team.</p> <p>4 Q. Can you give the jury a sense of your day-to-day</p> <p>5 responsibilities at Chubb as the chief enterprise architect?</p> <p>6 A. Sure. So architecture is a function, the function of</p> <p>7 leading provides a number of services to the organization.</p> <p>8 One is the blueprint I've described. Another one is</p> <p>9 technology guidance, technology evaluation and selection,</p> <p>10 and supporting the engineers in creating applications for</p> <p>11 the enterprise and implementing and making them successful.</p> <p>12 Q. You mentioned the engineers. Are those the folks who</p> <p>13 write and code?</p> <p>14 A. Yes, the coders.</p> <p>15 Q. Now, I just want to make sure the chronology of your</p> <p>16 employment is clear. As of year end 2015, what company were</p> <p>17 you working for?</p> <p>18 A. ACE.</p> <p>19 Q. And what was your position at ACE at the time?</p> <p>20 A. I was the chief architect for the international division</p> <p>21 of ACE.</p> <p>22 Q. In what year did you first join ACE?</p> <p>23 A. I joined in 1999.</p> <p>24 Q. Were all of your roles at ACE between 1999 and 2015 in</p> <p>25 the technology space?</p>	<p style="text-align: right;"><b>1135</b></p> <p>1 components come together. They are assembled together. In</p> <p>2 LEGO, you have LEGO blocks that can be attached and composed</p> <p>3 together to create an object. They all have an analogous</p> <p>4 function.</p> <p>5 Q. When you talk about components of a computer</p> <p>6 application, is that generally software products?</p> <p>7 A. Yes.</p> <p>8 Q. Are all the different components of a computer</p> <p>9 application usually the same size, or can they differ?</p> <p>10 A. No. They differ in size and complexity.</p> <p>11 Q. How about importance? Do they all have the same</p> <p>12 importance, or does that differ too?</p> <p>13 A. Also importance. There was a good example that</p> <p>14 Mr. Pandey produced where he was talking about the rating</p> <p>15 engine being Duck Creek being the critical component of an</p> <p>16 application.</p> <p>17 Q. Can you give the jury a sense of how many software</p> <p>18 products or individual components are found in a typical</p> <p>19 computer application at Chubb?</p> <p>20 A. Yeah. I would say probably on average 20 to 30.</p> <p>21 Q. So turning to ACE's IT infrastructure before the</p> <p>22 acquisition, as of early 2016, right before the acquisition,</p> <p>23 approximately how many different computer applications was</p> <p>24 ACE using?</p> <p>25 A. Just over 1,000.</p>
<p style="text-align: right;"><b>1134</b></p> <p>1 A. Yes, technology space.</p> <p>2 Q. And in what country were you working for ACE?</p> <p>3 A. In England.</p> <p>4 Q. Across your entire professional history, how many years</p> <p>5 have you been working in technology and architecture?</p> <p>6 A. Around 30 years.</p> <p>7 Q. And do you have a college degree?</p> <p>8 A. Yes.</p> <p>9 Q. What is your degree in?</p> <p>10 A. It's in accounting and software engineering.</p> <p>11 Q. And where did you obtain that degree?</p> <p>12 A. In Italy.</p> <p>13 Q. Okay. I want to put up on the screen, if we could,</p> <p>14 Defendants' Demonstrative 23. Have you seen this before,</p> <p>15 Mr. Ghislanzoni?</p> <p>16 A. Yes.</p> <p>17 Q. And did you help create it?</p> <p>18 A. Yes.</p> <p>19 Q. And what are you trying to show with these two pictures?</p> <p>20 A. It's another analogy. So on the right-hand side, it's a</p> <p>21 blueprint of an application. I think you have seen</p> <p>22 something like this this week, last week. Every box</p> <p>23 represents a component. Every line shows how a component</p> <p>24 connects with another component.</p> <p>25 Now, the analogy with LEGO is that all of these</p>	<p style="text-align: right;"><b>1136</b></p> <p>1 Q. And how many of those applications applied rules in some</p> <p>2 way?</p> <p>3 A. All of them.</p> <p>4 Q. Approximately, how many different software products was</p> <p>5 ACE using at the time?</p> <p>6 A. Hundreds.</p> <p>7 Q. And approximately how many different in-house IT</p> <p>8 professionals did ACE have around the time of the</p> <p>9 acquisition?</p> <p>10 A. Well over a thousand.</p> <p>11 Q. I want to focus on decision management software or rules</p> <p>12 software.</p> <p>13 Did you work with rules-based software products</p> <p>14 during your years at ACE?</p> <p>15 A. Yes.</p> <p>16 Q. And in very simple terms, how would you describe rules</p> <p>17 or decision management software?</p> <p>18 A. Yeah, rules management software is a software products</p> <p>19 that allows, provides typically a user interface, could be a</p> <p>20 web user interface, where rules are described. And they are</p> <p>21 stored in a repository. And what happens with this, thanks</p> <p>22 to the software, is programming language is generated from</p> <p>23 the rules.</p> <p>24 So ultimately what is executed on the, on the</p> <p>25 servers is programming language.</p>

<p style="text-align: right;">1258</p> <p>1 testimony of 20 different witnesses.</p> <p>2 And then we do our own publicly -- we research</p> <p>3 from publicly available sources. So we will look at the</p> <p>4 company's websites. We will look at their filings if</p> <p>5 they're a public company with the United States Security and</p> <p>6 Exchange Commission, things of that nature.</p> <p>7 <b>Q.</b> And did you speak with any individuals who had</p> <p>8 information relevant to this matter?</p> <p>9 <b>A.</b> I did. I spoke with Bick Whitener. He's in the</p> <p>10 insurance industry. He has had many, many years in the</p> <p>11 insurance industry. And he was retained on behalf of FICO,</p> <p>12 and I think he will be speaking at some point either today</p> <p>13 or tomorrow. And also Bill Waid, or Willy Waid. I think</p> <p>14 his new title -- I had his old title in my head, it's chief</p> <p>15 product manager at FICO.</p> <p>16 <b>Q.</b> And did you prepare any reports?</p> <p>17 <b>A.</b> I did. I prepared four expert reports in this case. My</p> <p>18 initial report was issued back in April, I believe, of 2019,</p> <p>19 and that summarized my initial opinions.</p> <p>20 I then issued a -- or submitted a reply report a</p> <p>21 few weeks after that, which was just a response to opinions</p> <p>22 that the opposing expert had.</p> <p>23 And then in I want to say August of 2020, but it</p> <p>24 was in 2020 and then also in 2021, I supplemented my</p> <p>25 opinions with new data that was provided by the defendants.</p>	<p style="text-align: right;">1260</p> <p>1 we build a story from what information we do have available</p> <p>2 to us.</p> <p>3 One example of where we would have a gap, for</p> <p>4 example, would be in a case I currently have right now that</p> <p>5 is actually going to trial in a couple months. My client</p> <p>6 was spun off from another company and then acquired by</p> <p>7 another company a couple years later, so we have three</p> <p>8 different financial and accounting systems that we're</p> <p>9 dealing with to try to extract the data that we need for the</p> <p>10 case.</p> <p>11 And so we have been working with them -- or have</p> <p>12 been working with them for months trying to figure out what</p> <p>13 the systems were and get people into a system and extracting</p> <p>14 the data, because some of it was legacy data that was stored</p> <p>15 on some drive somewhere in a closet that we had to try to</p> <p>16 figure out how to get information off of.</p> <p>17 So that's the best kind of example I could give in</p> <p>18 terms of what we do and how we get from point A to point B</p> <p>19 because every case is different, and in some cases we might</p> <p>20 have 999 pieces of the puzzle, and some we may have 150.</p> <p>21 <b>Q.</b> And based on your review and analysis of this</p> <p>22 information, you rendered certain opinions regarding gross</p> <p>23 revenue in this case, correct?</p> <p>24 <b>A.</b> Correct.</p> <p>25 <b>Q.</b> And tell us what those opinions are.</p>
<p style="text-align: right;">1259</p> <p>1 <b>Q.</b> And those reports, they formed the basis, the</p> <p>2 foundation, for your opinion today; is that correct?</p> <p>3 <b>A.</b> That's correct.</p> <p>4 <b>Q.</b> And so we -- we talked at a high level about the</p> <p>5 information you considered and your other previous work, and</p> <p>6 you just talked about expert reports.</p> <p>7 My question to you is, as an expert in economics</p> <p>8 and accounting and damages, how do you get from point A to</p> <p>9 point B, taking all that information and distilling it down</p> <p>10 into conclusions that are applicable to the case at hand?</p> <p>11 <b>A.</b> Sure. So it kind of works like a funnel where we have a</p> <p>12 lot of information that we need to process, information and</p> <p>13 data, both qualitative and quantitative information. And we</p> <p>14 need to determine what's the most relevant to the case and</p> <p>15 to what we're doing as experts in economic damages.</p> <p>16 The best analogy that we've come up with our team</p> <p>17 is, it's kind of like a jigsaw puzzle. So if you are at</p> <p>18 home doing a jigsaw puzzle and you have 1,000 pieces, when</p> <p>19 you buy it and bring it home, you know you have 1,000 pieces</p> <p>20 and you know what the picture looks like.</p> <p>21 We -- when we do a case, we don't know if we have</p> <p>22 1,000 pieces. We don't know if we have 200 pieces or 800</p> <p>23 pieces, and we have no idea what the picture is supposed to</p> <p>24 look like at the end. We kind of have an idea, but our job</p> <p>25 is to really figure out how do we fill in those gaps, how do</p>	<p style="text-align: right;">1261</p> <p>1 <b>A.</b> As I stated before, I assessed and quantified the gross</p> <p>2 revenue. And you're going to hear kind of the two terms,</p> <p>3 gross revenue and gross written premium, which are analogous</p> <p>4 here for purposes of this case. And I quantified that</p> <p>5 related to the infringement of FICO's copyrights, and in</p> <p>6 which there was a connection to Blaze Advisor. And for the</p> <p>7 United States that number was about 21.2 billion, and for</p> <p>8 Canada it was 154.4 million.</p> <p>9 And for ease of getting it into the record, I'm</p> <p>10 just going to read the numbers with the commas for the court</p> <p>11 reporter. For the United States, it's 21,202,380,943, and</p> <p>12 for Canada, it's 154,380,023.</p> <p>13 So I also matched up the writing companies that</p> <p>14 were associated with these gross written premiums as well,</p> <p>15 which I identified through my work.</p> <p>16 <b>Q.</b> And what are your conclusions with regard to the writing</p> <p>17 companies that you matched up?</p> <p>18 <b>A.</b> I'm not sure I understand your question. I'm sorry.</p> <p>19 <b>Q.</b> Maybe we will just get there in time. We've had a lot</p> <p>20 of claims and a lot of information come at folks quickly in</p> <p>21 this case, so I just want to make sure we're crystal clear</p> <p>22 about what your lane is and what it's not.</p> <p>23 <b>A.</b> Sure.</p> <p>24 <b>Q.</b> So I see on slide -- on this slide, the date March 30th,</p> <p>25 2016. Can you put a time period on your gross revenue</p>

<p style="text-align: right;">1262</p> <p>1 calculations?</p> <p>2 <b>A.</b> They began at the termination of the agreement, which is</p> <p>3 that March 30th, 2016, date and --</p> <p>4 <b>Q.</b> Go ahead. Sorry.</p> <p>5 <b>A.</b> And they ended, depending on when the -- when Blaze</p> <p>6 Advisor was removed in each application, which we understand</p> <p>7 to be for these entities at issue sometime in April of 2020.</p> <p>8 <b>Q.</b> And your opinions relate -- that was the time period.</p> <p>9 The subject matter is about disgorgement under The Copyright</p> <p>10 Act, correct?</p> <p>11 <b>A.</b> Correct.</p> <p>12 <b>Q.</b> Okay. Perfect. Before we dive into the details of your</p> <p>13 opinions, are there certain assumptions that you must make</p> <p>14 as an expert witness in this area that you must make for</p> <p>15 purpose of calculating damages?</p> <p>16 <b>A.</b> Yes. At the end of the day, as a damages expert, the</p> <p>17 one inherit assumption we have is that wrongdoing actually</p> <p>18 happened and there is liability. Obviously, without the</p> <p>19 liability, there would be no damage. There would be no</p> <p>20 reason for me to sit here today.</p> <p>21 But there are other assumptions, depending on the</p> <p>22 case, that I as an expert need to make to quantify damages.</p> <p>23 And in this case, there are some in particular related to</p> <p>24 copyrights and copyright infringement.</p> <p>25 So these assumptions are that FICO's copyright</p>	<p style="text-align: right;">1264</p> <p>1 <b>A.</b> Based on my analysis, I assessed and quantified the</p> <p>2 gross written premium from policies in connection with --</p> <p>3 which Blaze Advisor received, beginning in -- on March 30th,</p> <p>4 2016, and that number is in the United States approximately</p> <p>5 21.2 billion, and in Canada, it's 154.4 million.</p> <p>6 <b>Q.</b> And generally, what are the steps you took to quantify</p> <p>7 these amounts?</p> <p>8 <b>A.</b> I'm not sure I understand your question. I'm sorry.</p> <p>9 <b>Q.</b> How did you -- how did you -- what is the general</p> <p>10 process you used to calculate these numbers?</p> <p>11 <b>A.</b> I think, as I talked about, there is lots of information</p> <p>12 that we receive and that we review and analyze. In this</p> <p>13 case, there was information and data that was provided by</p> <p>14 Federal and ACE regarding these gross written premiums that</p> <p>15 had -- where their applications for their entities had used</p> <p>16 Blaze Advisor in some way.</p> <p>17 <b>Q.</b> And your next slide, can you describe this next slide</p> <p>18 for us?</p> <p>19 <b>A.</b> Sure. This is really just a breakdown of the \$21.2</p> <p>20 billion by application. You can see for Canada, it's only</p> <p>21 one application, so that's why it's only one line item. And</p> <p>22 so these are the different amounts that are associated with</p> <p>23 each of the applications for Federal and ACE.</p> <p>24 And so you have them listed here, Commercial</p> <p>25 Underwriting Workstation. You may have heard CUW used as an</p>
<p style="text-align: right;">1263</p> <p>1 registrations are valid, that FICO's copyright registrations</p> <p>2 for Blaze Advisor are enforceable, that FICO controls and</p> <p>3 owns the copyrights at issue and that, as I said previously,</p> <p>4 Federal and ACE are liable for copyright infringement.</p> <p>5 And while these sound like basic assumptions,</p> <p>6 there are cases where there is a dispute over ownership of</p> <p>7 the intellectual properties, say the copyrights, and so this</p> <p>8 may be an assumption that may be in dispute, but I still</p> <p>9 have to assume it's true for purposes of my analysis.</p> <p>10 <b>Q.</b> And I think you just answered my next question. I</p> <p>11 wanted to clarify. "Assumption" is kind of a term of art in</p> <p>12 your industry. I just want to make it crystal clear as to</p> <p>13 what is an assumption?</p> <p>14 <b>A.</b> It's something we assume to be true for purposes of</p> <p>15 really taking me from one lily pad to the next lily pad so I</p> <p>16 can actually start quantifying damages.</p> <p>17 The assumptions that we use have to be reasonable.</p> <p>18 You know, some of them are given to us, and they are factual</p> <p>19 that we can see on, you know, in plain black and white.</p> <p>20 Some are not always, and we need to test those to make sure</p> <p>21 they are reasonable.</p> <p>22 <b>Q.</b> Let's move on to your -- your first opinion.</p> <p>23 Mr. Zoltowski, can you tell us again what is the first</p> <p>24 opinion you reached as a result of your analysis in this</p> <p>25 case?</p>	<p style="text-align: right;">1265</p> <p>1 acronym. There is CSI Express, Profitability Indicator, and</p> <p>2 ARP-1 and 2. My understanding is the reason that they're</p> <p>3 grouped together -- or the reason we did it, but my</p> <p>4 understanding was that there is policies that go through</p> <p>5 those systems -- the same policy may go through all three of</p> <p>6 these systems or may go through two of the three, and,</p> <p>7 therefore, some of the data we had received previously had</p> <p>8 double-counted some of the policies and premiums.</p> <p>9 And so my understanding now is that Federal and</p> <p>10 ACE have been able to remove the duplicates, and the data we</p> <p>11 finally have received in the last supplement has removed all</p> <p>12 of that -- the duplicate entries for these premiums or those</p> <p>13 policies.</p> <p>14 There is also premium booking; Texas Accident</p> <p>15 Prevention System, which TAPS is the acronym that you may</p> <p>16 have heard; Cornerstone; Individual Rate Modification</p> <p>17 Application, or IRMA. And DecisionPoint for the U. S. You</p> <p>18 can see the amounts are on the right side in the total</p> <p>19 column.</p> <p>20 And below is the application for Canada, which is</p> <p>21 Evolution, which is the entire amount of 154.4 million.</p> <p>22 <b>Q.</b> You just brought up something that people may have a</p> <p>23 question about, so I want to answer that before we move on.</p> <p>24 You mentioned that certain applications are grouped together</p> <p>25 because policies run through several of them. Could you</p>



<p style="text-align: right;">1270</p> <p>1 you used to run your calculations?</p> <p>2 <b>A.</b> It is.</p> <p>3 <b>Q.</b> And can you identify it for us?</p> <p>4 <b>A.</b> It's Defendants' Eighth Supplemental Answer to</p> <p>5 Plaintiff's Interrogatory Number 17. And I believe the date</p> <p>6 is at the end. It was -- on the back there is some</p> <p>7 verification pages related to the individuals who verified</p> <p>8 the data. Sometimes those dates are not the same as when</p> <p>9 they actually provide the data just because they have to</p> <p>10 track down those individuals.</p> <p>11 <b>Q.</b> The verifications start at page 13.</p> <p>12 <b>A.</b> June 15th, 2020, is when this interrogatory is dated.</p> <p>13 MS. KLIEBENSTEIN: Let's go to page 2 if we could,</p> <p>14 Mr. Mayleben, page 2 of Exhibit 1004A. Excellent.</p> <p>15 BY MS. KLIEBENSTEIN:</p> <p>16 <b>Q.</b> So interrogatory is what, again?</p> <p>17 <b>A.</b> I like to describe it as a fancy way of saying question.</p> <p>18 <b>Q.</b> A question from whom to whom?</p> <p>19 <b>A.</b> They're posed back and forth between the parties, but in</p> <p>20 this instance, it's from the plaintiffs to the defendant.</p> <p>21 <b>Q.</b> So this is -- this is a question that FICO asked the</p> <p>22 defendants to answer, correct?</p> <p>23 <b>A.</b> Correct.</p> <p>24 <b>Q.</b> And here, if we could make interrogatory number 17 a bit</p> <p>25 larger, what was the question that FICO asked the defendants</p>	<p style="text-align: right;">1272</p> <p>1 Year/Writing Company. So you can see in 2020, it lists</p> <p>2 three different writing companies, and those are acronyms</p> <p>3 for different entities. So, for example, CICNJ would be</p> <p>4 Chubb Insurance Company of New Jersey, and then on down.</p> <p>5 The middle column is the gross written premium</p> <p>6 amounts. That relate to where policies touched Blaze</p> <p>7 Advisor.</p> <p>8 And then the right column is Called Policy Count</p> <p>9 is the name of the header, and that's the number of policies</p> <p>10 that are associated with that gross written premium.</p> <p>11 <b>Q.</b> So this table is for the DecisionPoint application</p> <p>12 specifically?</p> <p>13 <b>A.</b> That's correct.</p> <p>14 <b>Q.</b> And on the left-hand side is the writing companies that</p> <p>15 wrote policies that -- that touched Blaze Advisor in the</p> <p>16 DecisionPoint application; is that right?</p> <p>17 <b>A.</b> That's right.</p> <p>18 <b>Q.</b> And then in the middle is the gross written premium</p> <p>19 revenue connected with those policies?</p> <p>20 <b>A.</b> Correct. And then it has the amount associated with</p> <p>21 each entity, and then it totals it for each year. And same</p> <p>22 thing for the policy counts.</p> <p>23 <b>Q.</b> What did your team do -- just focusing on this</p> <p>24 DecisionPoint example so that we can understand the process</p> <p>25 generally, what did your team do with this data?</p>
<p style="text-align: right;">1271</p> <p>1 to answer?</p> <p>2 <b>A.</b> So interrogatory number 17, the question was, "For all</p> <p>3 insurance policies in connection with which the Blaze</p> <p>4 Advisor software was used, the gross written premium of</p> <p>5 defendants and the gross written premium of each related</p> <p>6 company, including the specific identification of each</p> <p>7 related company, for each quarter from March 30th, 2016, to</p> <p>8 date."</p> <p>9 <b>Q.</b> And so this was asking for specific revenue, not general</p> <p>10 company-wide revenue, correct?</p> <p>11 <b>A.</b> Yes. It's a very specific request targeted at the</p> <p>12 policies that specifically touched Blaze Advisor.</p> <p>13 <b>Q.</b> And we have some redactions of lawyer objections and</p> <p>14 stuff, but if we move down to the next page right there.</p> <p>15 Thank you.</p> <p>16 The data starts. If you could repeat for us again</p> <p>17 who asked who for this data?</p> <p>18 <b>A.</b> It was a FICO request to the defendants for this data.</p> <p>19 <b>Q.</b> And so this is data that the defendants provided to us,</p> <p>20 correct?</p> <p>21 <b>A.</b> Correct.</p> <p>22 <b>Q.</b> And let's just take this table at the top that says</p> <p>23 "DecisionPoint." So that we know what we're even looking at</p> <p>24 here, can you walk us through this table?</p> <p>25 <b>A.</b> Sure. On the left-hand side, the first column is</p>	<p style="text-align: right;">1273</p> <p>1 <b>A.</b> We took all the data and put it into -- I think we only</p> <p>2 used Excel in this case, but many times we will use SQL</p> <p>3 Server when we have really large tranches of data. And our</p> <p>4 team will organize this data, sort it. We had to obviously</p> <p>5 figure out in certain instances what the acronyms stood for</p> <p>6 for the writing companies and match them up appropriately.</p> <p>7 And we were trying to look at it different ways, so we</p> <p>8 organized it in different ways.</p> <p>9 <b>Q.</b> And moving on to the next table, and it spans -- well,</p> <p>10 let's just deal with this one, this snapshot first. What</p> <p>11 information is in this table?</p> <p>12 <b>A.</b> This is CSI Express, ARP or Automated Renewal Process,</p> <p>13 and Profitability Indicator or PI.</p> <p>14 <b>Q.</b> And the information that is in each of the columns, is</p> <p>15 it similar to what you just talked about with DecisionPoint?</p> <p>16 <b>A.</b> It is. And so you can see the writing companies and the</p> <p>17 associated year on the left, the gross written premium in</p> <p>18 the middle column, and then the number of policies that</p> <p>19 would relate to each entity and the gross written premium</p> <p>20 for that particular year in the middle column.</p> <p>21 <b>Q.</b> And then let's back out of this blowup and let's go</p> <p>22 forward a page.</p> <p>23 And that information is still for the CSI Express,</p> <p>24 et cetera?</p> <p>25 <b>A.</b> Correct. You can see it's for the years 2017 through</p>



<p style="text-align: right;">1318</p> <p>1 <b>Q.</b> And what information in this agreement played a role in</p> <p>2 your analysis relating to the -- to the ACE American led</p> <p>3 pooling companies that are also writing companies in this</p> <p>4 case?</p> <p>5 <b>A.</b> Sure. There's a lot of information in here, but I will</p> <p>6 try to highlight what's most important.</p> <p>7 You can see that at least on the last page, it</p> <p>8 does lay out in Addendum A all of the services that may be</p> <p>9 provided under the agreement, which covers everything from</p> <p>10 admin support, to claims, financial, HR, information</p> <p>11 technology, legal, operations, so pretty much everything</p> <p>12 that would relate to the operations of a company.</p> <p>13 And this is the agreement, I believe -- let me</p> <p>14 just check the first page. This is where the parties, being</p> <p>15 Federal and ACE, agreed that they could provide services for</p> <p>16 one another. And I believe that the amendment was then the</p> <p>17 parties agreeing for ACE to actually provide that service to</p> <p>18 the Federal pooling entities.</p> <p>19 <b>Q.</b> Let's move back out to your demonstrative.</p> <p>20 What information is contained on this slide?</p> <p>21 <b>A.</b> So the blue box on the left is the Federal pooling</p> <p>22 entities during the years 2016 and 2017. So you can see</p> <p>23 them listed there as Chubb Custom Insurance, Chubb</p> <p>24 Indemnity, Chubb National, Executive Risk Indemnity,</p> <p>25 Executive Risk Specialty Insurance, Federal Insurance, Great</p>	<p style="text-align: right;">1320</p> <p>1 Federal pool entities are now --</p> <p>2 Actually, I take that back. Sorry. There's</p> <p>3 five -- Chubb Insurance Company of New Jersey I thought</p> <p>4 was -- no. It was added. I apologize. It's four from ACE</p> <p>5 American, four from Federal, and two new entities who have</p> <p>6 now joined this pool.</p> <p>7 And this Chubb INA pool is what was created from</p> <p>8 the agreement we just looked at.</p> <p>9 <b>Q.</b> And just walk us through again, because it's -- it's a</p> <p>10 factually intense topic. The 2016, the 2018 changes in the</p> <p>11 pools that we just saw reflected in that slide, walk me</p> <p>12 through so it's clear for the record what happened again. I</p> <p>13 know we saw it a little bit. We saw it in Exhibit 32.</p> <p>14 <b>A.</b> Yeah, it's confusing. ACE American had a pool of</p> <p>15 entities, which we looked at. That was in the red box on</p> <p>16 the prior page. Federal Insurance had its own pool. That</p> <p>17 was in the blue box on the prior page, and that was for the</p> <p>18 years 2016 and 2017.</p> <p>19 In 2018, they decided to create this new pool,</p> <p>20 which was a combination of entities from those two pools,</p> <p>21 which now created a new pool called the Chubb INA pool.</p> <p>22 However, ACE American is the one who controls the entity in</p> <p>23 the Chubb INA pool.</p> <p>24 <b>Q.</b> And what did you determine after reviewing these pooling</p> <p>25 arrangements as it relates to the disgorgement amount in</p>
<p style="text-align: right;">1319</p> <p>1 Northern Insurance, Pacific Indemnity, and Vigilant</p> <p>2 Insurance.</p> <p>3 <b>Q.</b> And before we move on to the middle bucket, what are the</p> <p>4 dates on the Federal pool?</p> <p>5 <b>A.</b> This was the pool in effect in 2016 and 2017 that</p> <p>6 Federal controlled.</p> <p>7 <b>Q.</b> And those entities that you've listed, those are also</p> <p>8 writing companies that we saw in the interrogatory number</p> <p>9 17?</p> <p>10 <b>A.</b> That's correct.</p> <p>11 <b>Q.</b> And now let's move on to the middle bucket, ACE American</p> <p>12 pool entities. Tell me about that bucket.</p> <p>13 <b>A.</b> These are ACE American pool entities that are also</p> <p>14 writing companies for the years 2016 and 2017. And the list</p> <p>15 includes ACE American, ACE Fire underwriters Insurance</p> <p>16 Company, ACE Property and Casualty Insurance, and Pacific</p> <p>17 Employers Insurance.</p> <p>18 <b>Q.</b> And did you say the dates?</p> <p>19 <b>A.</b> Yes. It's 2016 and 2017.</p> <p>20 <b>Q.</b> And let's move on to the third bucket. What is in that</p> <p>21 bucket, and what's the color coding?</p> <p>22 <b>A.</b> This is the green header or banner with a -- it's a</p> <p>23 black box, and it's the Chubb INA pool entities for 2018 and</p> <p>24 2020. And you can see that the four ACE American pool</p> <p>25 entities are now part of this pool and that four of the</p>	<p style="text-align: right;">1321</p> <p>1 this case?</p> <p>2 <b>A.</b> That the gross written premiums for those entities</p> <p>3 should be included as they're under common control of</p> <p>4 Federal and ACE American.</p> <p>5 <b>Q.</b> The pool leaders are managing and in control of the</p> <p>6 revenue?</p> <p>7 <b>A.</b> Yes, among many other things.</p> <p>8 <b>Q.</b> So would you agree they're acting as a single economic</p> <p>9 unit in that instance?</p> <p>10 <b>A.</b> I would.</p> <p>11 <b>Q.</b> And so let's -- let's wrap up your -- how the pooling</p> <p>12 entity analysis moves into your disgorgement figures. What</p> <p>13 is your opinion in this case relating to the different</p> <p>14 buckets of revenues that we saw in interrogatory number 17?</p> <p>15 <b>A.</b> Based on the gross written premiums related to policies</p> <p>16 that touched Blaze Advisor, there are gross written premiums</p> <p>17 from three categories as laid out in this table. And you</p> <p>18 can see that the different applications they relate to are</p> <p>19 on the left-hand side.</p> <p>20 But those three categories are the defendants,</p> <p>21 Federal and ACE American; the subsidies, which we talked</p> <p>22 about; and then the pooling entities. And they're laid out</p> <p>23 from left to right in the table with the total in the right</p> <p>24 column, furthest to the right.</p> <p>25 <b>Q.</b> And I want to revisit something really quickly. The</p>

<p style="text-align: right;">1322</p> <p>1 data that is in this table, where does it come from?</p> <p>2 <b>A.</b> It was provided by Federal in their responses to</p> <p>3 interrogatories that were sent by FICO to them.</p> <p>4 <b>Q.</b> And I want to -- I want to do just one more thing with</p> <p>5 these interrogatories.</p> <p>6 Mr. Mayleben, if you could pull up P-1004A.</p> <p>7 So this is the Eighth Supplemental Answer to</p> <p>8 Interrogatory Number 17.</p> <p>9 <b>A.</b> Yes. That's correct.</p> <p>10 <b>Q.</b> And could we move back to page 16 in the document,</p> <p>11 Mr. Mayleben. That's right. Thank you.</p> <p>12 What are we looking at on this page that's at the</p> <p>13 back end of this interrogatory number 17, the eighth</p> <p>14 supplemental?</p> <p>15 <b>A.</b> This is a verification page, and it's signed by Malcolm</p> <p>16 Irving, and it states that under oath he is the -- he is in</p> <p>17 the financial lines information technology, I believe is</p> <p>18 what IT would stand for, and that he was authorized to</p> <p>19 respond to this interrogatory number 17 on behalf of Federal</p> <p>20 as it relates to the Financial Lines Unit.</p> <p>21 <b>Q.</b> And let's move to the next page. Tell me what we see on</p> <p>22 this page.</p> <p>23 <b>A.</b> This is a similar verification page. It's signed by C.</p> <p>24 Chase McCarthy, and it states -- or he states under oath</p> <p>25 that he is an IT, which again I believe is information</p>	<p style="text-align: right;">1324</p> <p>1 relied on directors, employees, agents and attorneys to</p> <p>2 formulate the answer and that the answer is both true and</p> <p>3 correct to the best of her knowledge.</p> <p>4 <b>Q.</b> Mr. Mayleben, if we could move back to the interrogatory</p> <p>5 number 17 itself. If we could move ahead a page and blow up</p> <p>6 the interrogatory.</p> <p>7 So there were three people on behalf of defendants</p> <p>8 that certified under oath about the data provided in</p> <p>9 response to interrogatory number 17. Is that what we just</p> <p>10 saw?</p> <p>11 <b>A.</b> Yes. That's correct.</p> <p>12 <b>Q.</b> And moving quickly to P1007, which is Defendants' Ninth</p> <p>13 Supplemental Answer to FICO's Interrogatory Number 17, if we</p> <p>14 can go to the last page, do we again see the same type of</p> <p>15 interrogatory -- apologies -- verification?</p> <p>16 <b>A.</b> Yes. It's -- again, it's signed by C. Chase McCarthy as</p> <p>17 the IT lead North America Commercial Middle Market/Chief</p> <p>18 Architect for Personal Risk Services. And this is as it</p> <p>19 relates to the Chubb Commercial Insurance Business unit or</p> <p>20 CCI.</p> <p>21 And again, formulated the answer by relying upon</p> <p>22 directors, employees, agents and attorneys and that the</p> <p>23 answer is true and correct to the best of his knowledge.</p> <p>24 <b>Q.</b> So defendants again verified that the ninth supplemental</p> <p>25 response to interrogatory number 17 was true and correct,</p>
<p style="text-align: right;">1323</p> <p>1 technology, lead for North America Commercial Middle Market</p> <p>2 and I believe Chief Architect for Personal Risk Services. I</p> <p>3 believe that slash is supposed to separate those two titles.</p> <p>4 And that he is authorized to respond to this</p> <p>5 interrogatory number 17 on behalf of Federal Insurance</p> <p>6 Company as it relates to the Chubb Commercial Insurance</p> <p>7 business unit, otherwise known as CCI.</p> <p>8 <b>Q.</b> And just like we saw on the previous page verification,</p> <p>9 he's relied on directors, employees, agents and attorneys to</p> <p>10 provide information used in formulating the answer to the</p> <p>11 above interrogatory being interrogatory number 17?</p> <p>12 <b>A.</b> Correct. And he is swearing under oath that the answer</p> <p>13 is true and correct to the best of his knowledge, just like</p> <p>14 the prior page.</p> <p>15 <b>Q.</b> Let's move to the final page in this eighth supplemental</p> <p>16 response to interrogatory number 17. Is this a third</p> <p>17 verification page?</p> <p>18 <b>A.</b> It is, and it's signed by Tracie, that's T-R-A-C-I-E,</p> <p>19 D., Jerd, J-E-R-D. And it states under oath that she is the</p> <p>20 program manager for Enterprise Content Management, Workflow</p> <p>21 BPM, which would be Business Process Management, I assume,</p> <p>22 and Sunset Applications for Chubb North America.</p> <p>23 And again, just like the others, she is authorized</p> <p>24 to respond on behalf of Federal to this interrogatory number</p> <p>25 17, and it relates to Premium Booking and Cornerstone. She</p>	<p style="text-align: right;">1325</p> <p>1 correct?</p> <p>2 <b>A.</b> That would be my understanding.</p> <p>3 <b>Q.</b> And I think we already looked at the interrogatory</p> <p>4 verification in 1008, so we don't need to do that.</p> <p>5 Mr. Mayleben, can we move back to -- there we go.</p> <p>6 Okay.</p> <p>7 Mr. Zoltowski, you testified earlier that the data</p> <p>8 in this slide came from interrogatory number 17, correct?</p> <p>9 <b>A.</b> That's correct.</p> <p>10 MR. KLIEBENSTEIN: Your Honor, for efficiency</p> <p>11 sake, I would like to move this single slide into admission</p> <p>12 as Exhibit 1177.</p> <p>13 MS. GODESKY: Objection, Your Honor.</p> <p>14 THE COURT: The exhibit is received.</p> <p>15 MS. GODESKY: I said objection.</p> <p>16 THE COURT: Oh, you said objection. In that case,</p> <p>17 it's sustained.</p> <p>18 MR. KLIEBENSTEIN: Okay. Then we will read into</p> <p>19 the record the data that we see here, unfortunately.</p> <p>20 BY MR. KLIEBENSTEIN:</p> <p>21 <b>Q.</b> So let's start with -- let's start with the top row and</p> <p>22 go across that way for Commercial Underwriting Workstation</p> <p>23 and then identify the different columns that we have,</p> <p>24 Mr. Zoltowski.</p> <p>25 <b>A.</b> At the top of the table, there are five columns in</p>

<p style="text-align: right;">1326</p> <p>1 total, starting from left to right. The headings for each</p> <p>2 of the columns read as follows: U.S. Applications is the</p> <p>3 first. Defendants is the second. Subsidiaries is the</p> <p>4 third. Pools is the forth, and Total is the fifth, which</p> <p>5 will be furthest to the right.</p> <p>6 <b>Q.</b> So now we have to read the monetary amounts into the</p> <p>7 record.</p> <p>8 <b>A.</b> I'm going to go row by row, and this is by application.</p> <p>9 So for Commercial Underwriting Workstation, the amount of</p> <p>10 gross written premiums for defendants is 7,656,976,388 -- I</p> <p>11 apologize -- '368. I should have brought my reading</p> <p>12 glasses.</p> <p>13 The next amount is for the subsidiaries, for CUW,</p> <p>14 and that's 3,663,148,142.</p> <p>15 Pools for CUW is 1,427,268,700. And the total for</p> <p>16 CUW is 12,747,393,210. The next line item is CSI Express</p> <p>17 Profitability Indicator and Automated Renewal Process. This</p> <p>18 is all on the same line item. For defendants, the amount is</p> <p>19 4,783,945,129.</p> <p>20 For subsidiaries, it's 132,704,843.</p> <p>21 For pools, it's 94,672,823.</p> <p>22 And the total for these three applications, which</p> <p>23 are CSI Express, Profitability Indicator, and Automated</p> <p>24 Renewal Process is 5,011,322,794.</p> <p>25 The next line item is Premium Booking. The total</p>	<p style="text-align: right;">1328</p> <p>1 Subsidiaries total is 4,133,966,925. The pools total is</p> <p>2 1,654,163,542. And the overall total is 21,202,380,943.</p> <p>3 <b>Q.</b> And we'll have one more that we'll -- two more that</p> <p>4 we'll talk about in a minute. But I wanted to take a break</p> <p>5 from the reading and address one final topic with you.</p> <p>6 So we talked about revenues with your testimony;</p> <p>7 is that right?</p> <p>8 <b>A.</b> That's correct, gross revenues or in this instance,</p> <p>9 gross written premiums.</p> <p>10 <b>Q.</b> And generally speaking, what is profit?</p> <p>11 <b>A.</b> A profit basically is revenue less expenses.</p> <p>12 <b>Q.</b> And your opinions just identified revenue and not</p> <p>13 expenses or profit. Why is that?</p> <p>14 <b>A.</b> Based on The Copyright Act, based on the law, I as the</p> <p>15 plaintiff's expert only needs to identify the gross</p> <p>16 revenues, and then it's the burden of the infringer as it's</p> <p>17 written in the statute.</p> <p>18 MS. GODESKY: Objection, Your Honor.</p> <p>19 THE COURT: Sustained.</p> <p>20 BY MR. KLIEBENSTEIN:</p> <p>21 <b>Q.</b> Let's just talk about -- let's leave the law aside. And</p> <p>22 in this situation, why are you only addressing revenues,</p> <p>23 leaving the law aside?</p> <p>24 <b>A.</b> Typically I would address costs if I had the appropriate</p> <p>25 data that would allow me to do so, even as an expert working</p>
<p style="text-align: right;">1327</p> <p>1 for the defendants is 1,750,877,402. And the total for</p> <p>2 Premium Booking would be that same amount, 1,750,877,402.</p> <p>3 The next line item is TAPS or Texas Accident</p> <p>4 Prevention System. For defendants, it's 462,805,017. The</p> <p>5 total for subsidiaries is 270,951,408. The total for pools</p> <p>6 is 110,550,113. And the total for TAPS is 844,306,538.</p> <p>7 The next line item is IRMA or Individual Rate</p> <p>8 Modification Application. The total for defendants is</p> <p>9 223,406,656. The total for subsidiaries is 69,554,858. The</p> <p>10 total for pools is 7,355,485. And the total for IRMA is</p> <p>11 300,316,999.</p> <p>12 The next line item is DecisionPoint. The total</p> <p>13 for defendants is 18,101,109. The total for subsidiaries is</p> <p>14 1,117,772. The total for pools is 34,636. And the total</p> <p>15 for DecisionPoint is 19,253,516.</p> <p>16 And the last application line item is Cornerstone.</p> <p>17 For defendants, the total is 518,138,795. The subsidiaries</p> <p>18 total is -- it's actually a negative number just because of</p> <p>19 the way the data was received, so it's a negative 3,510,098.</p> <p>20 And that's just because it's trying to split them</p> <p>21 up in a certain way based upon the data we have and didn't</p> <p>22 have insight into doing so. So the pools total is</p> <p>23 14,281,786. And the total for Cornerstone is 528,910,484.</p> <p>24 And the total for all of these, I know everyone</p> <p>25 has been waiting for, defendants is 15,414,250,476.</p>	<p style="text-align: right;">1329</p> <p>1 on behalf of a plaintiff.</p> <p>2 <b>Q.</b> And why didn't you do that here?</p> <p>3 <b>A.</b> Based on the information that was available, it was -- I</p> <p>4 couldn't accurately or precisely quantify the costs that</p> <p>5 were directly related to these particular -- the gross</p> <p>6 written premiums.</p> <p>7 <b>Q.</b> And can you give me -- can you give me an example, just</p> <p>8 a general example, of where you would be able to identify</p> <p>9 not just the revenues but the direct costs associated</p> <p>10 with -- like the cost of goods sold or something like that?</p> <p>11 <b>A.</b> Sure. So I mean, typically we're operating in widgets</p> <p>12 or something like that, so maybe around here snowmobiles or</p> <p>13 something of that nature. As a company that's reporting</p> <p>14 their financials, there's materials and labor that go into</p> <p>15 their production of that snowmobile.</p> <p>16 It typically would have information that would</p> <p>17 allow us to say here's the costs that relate to these</p> <p>18 snowmobiles that are at issue that were sold and the</p> <p>19 revenues associated with those sales and deduct those costs,</p> <p>20 which would be the cost of goods sold as the terminology</p> <p>21 is -- and get us to at least a gross profit number.</p> <p>22 Now, there may be additional costs that might be</p> <p>23 related, but we can at least get us to that first -- that</p> <p>24 first step, and here we just did not have data that would</p> <p>25 allow us to even make that first step.</p>

<p style="text-align: right;">1330</p> <p>1 <b>Q.</b> And explain that further. Why not? What were you</p> <p>2 missing in that initial first step?</p> <p>3 <b>A.</b> My understanding is that we have data from business</p> <p>4 units, and it was overinclusive of costs and -- cost data</p> <p>5 and cost information, as well as even the revenue data that</p> <p>6 was included with that.</p> <p>7 <b>Q.</b> All right. Let's move back to the data again.</p> <p>8 Mr. Zoltowski, where do the numbers in this slide</p> <p>9 come from?</p> <p>10 <b>A.</b> This is the summary of U.S. gross written premiums by</p> <p>11 application by year. Correct?</p> <p>12 <b>Q.</b> And that came from interrogatory 17, right?</p> <p>13 <b>A.</b> Yes. I just wanted to make sure I was on the right</p> <p>14 slide.</p> <p>15 MR. KLIEBENSTEIN: Your Honor, I would ask to move</p> <p>16 this single slide into evidence as Exhibit 1177.</p> <p>17 MS. GODESKY: Objection, Your Honor.</p> <p>18 THE COURT: Sustained.</p> <p>19 BY MR. KLIEBENSTEIN:</p> <p>20 <b>Q.</b> Mr. Zoltowski, can you, just like we did for the last</p> <p>21 table, can you read the data in this table into the record,</p> <p>22 and then we'll finish with Canada, and we'll be done.</p> <p>23 <b>A.</b> I'd be happy to.</p> <p>24 So, again, this table has application in the</p> <p>25 furthest left column, and there are five other columns which</p>	<p style="text-align: right;">1332</p> <p>1 the total is 1,277,242,740. And for the January through May</p> <p>2 2020 period, it is 125,825,726. And the total for CSI</p> <p>3 Express, Profitability Indicator, Automated Renewal Process</p> <p>4 or ARP is 5,011,322,794.</p> <p>5 The next line item is Premium Booking. For the</p> <p>6 March 31st through December 31st, 2016, period, the number</p> <p>7 is 380,416,844. For 2017, the total is 442,839,932. For</p> <p>8 2018, the total is 500,850,829. For 2019 the total is</p> <p>9 426,769,797. The number is zero for 2020.</p> <p>10 And the overall total for Premium Booking for the</p> <p>11 March 31st, 2016, through May 2020 period is 1,750,877,402.</p> <p>12 The next line item is TAPS or Texas Accident</p> <p>13 Prevention System. The total for March 31st through</p> <p>14 December 31st, 2016, is 215,420,480. For 2017, the number</p> <p>15 is 252,219,200. For 2018, the total is 216,490,943. For</p> <p>16 2019, the total is 160,175,914.</p> <p>17 The total for 2020 is zero. Therefore, the</p> <p>18 overall total for TAPS for the period March 31st, 2016,</p> <p>19 through May 2020 is 844,306,538.</p> <p>20 The next line item is Cornerstone. For the March</p> <p>21 31st through December 31st, 2016, period, the total is</p> <p>22 158,202,931. For 2017, the total is 248,313,042. For 2018,</p> <p>23 the total is 122,400,980.</p> <p>24 And again, this is one of these quirky ones just</p> <p>25 based on the data we had, and it's a negative number for</p>
<p style="text-align: right;">1331</p> <p>1 are covering the time periods, from 2016 through 2020. And</p> <p>2 then the final column on the right is total. And also want</p> <p>3 to note that in 2016, it only covers the period March 31</p> <p>4 through December 31.</p> <p>5 And then I think this last column is actually just</p> <p>6 a misprint, because it should be January, I believe, through</p> <p>7 May based upon other tables. So 2020 is January through</p> <p>8 May.</p> <p>9 And then below those header, that header row are</p> <p>10 all of the applications and the associated gross written</p> <p>11 premiums, which I'll read by line item by year.</p> <p>12 For Commercial Underwriting Workstation or CUW,</p> <p>13 for the March 31st through December 31st, 2016 period, the</p> <p>14 number is 2,802,600,382. In 2017, for CUW it's</p> <p>15 3,409,127,185. In 2018, for CUW it is 2,882,872,838. In</p> <p>16 2019, it is 3,652,792,805. And it's zero for 2020. And the</p> <p>17 total for CUW over the March 31st, 2016, through May 2020</p> <p>18 time period is 12,747,393,210.</p> <p>19 The next line item is the three applications</p> <p>20 bucketed together, once again, which are CSI Express,</p> <p>21 Profitability Indicator, and Automated Renewal Process or</p> <p>22 ARP. For the March 31st through December 31st, 2016,</p> <p>23 period, the total is 1,008,080,734. 2017, the total is</p> <p>24 1,358,180,203.</p> <p>25 For 2018, the total is 1,241,993,390. For 2019,</p>	<p style="text-align: right;">1333</p> <p>1 2019. It's negative 6,469. And the total -- I'm sorry --</p> <p>2 for 2020, it is zero for Cornerstone. The total for</p> <p>3 Cornerstone for the March 31st, 2016, through May 2020</p> <p>4 period is 528,910,484.</p> <p>5 The next line item is IRMA or Individual Rate</p> <p>6 Modification Application. From the period March 31st</p> <p>7 through December 31st, 2016, the total is 68,975,636. For</p> <p>8 2017, the total is 89,449,543. For 2018, the total is</p> <p>9 80,968,955. For 2019, the total for IRMA is 60,922,865.</p> <p>10 The total in 2020 is zero. And so the total for the whole</p> <p>11 period of March 31st, 2016, through May 2020 for IRMA is</p> <p>12 300,316,999.</p> <p>13 And then the last line item is DecisionPoint for</p> <p>14 the March 31st through December 31st, 2016, period. The</p> <p>15 total is 2,680,739. For 2017, the total is 4,319,856. For</p> <p>16 2018, the total is 4,779,439.</p> <p>17 For 2019 for DecisionPoint, the total is</p> <p>18 5,846,994. For the January through May 2020 period, the</p> <p>19 total is 1,626,488. And that brings us to a total for</p> <p>20 DecisionPoint over the March 31st, 2016, through May 2020</p> <p>21 period of 19,253,516.</p> <p>22 And the totals for each year, this is for all</p> <p>23 applications, the total amount for March 31 through December</p> <p>24 31st, 2016, is 4,636,377,746. For 2017, the overall total</p> <p>25 for all applications is 5,804,448,961. In 2018, the total</p>

<p style="text-align: right;">1334</p> <p>1 is 5,050,357,375. For 2019, the overall total for all  2 applications is 5,583,744,647.  3 And for the January through May 2020 period, the  4 overall total is 127,452,214. And that gives an overall  5 total for the March 31st, 2016, through June -- I'm sorry --  6 through May 2020 period of 21,202,380,943.  7 <b>Q.</b> All right. One final read-in.  8 <b>A.</b> I'm surprised people are still awake.  9 <b>Q.</b> Yes. For Evolution Canada, can you read the total  10 amount?  11 <b>A.</b> For the Evolution application for Canada, the total  12 gross written premium is 154,380,023.  13 <b>Q.</b> And that was for the year 2016, correct?  14 <b>A.</b> Correct.  15 <b>Q.</b> Okay. Thank you, Mr. Zoltowski.  16 THE COURT: Thank you, Ms. Kliebenstein.  17 Ms. Godesky.  18 MS. GODESKY: Thank you.  19 CROSS-EXAMINATION  20 BY MS. GODESKY:  21 <b>Q.</b> Hi.  22 <b>A.</b> Hi.  23 <b>Q.</b> Good afternoon, Mr. Zoltowski.  24 <b>A.</b> Good afternoon.  25 <b>Q.</b> My name is Leah Godesky, and I represent the defendants</p>	<p style="text-align: right;">1336</p> <p>1 MS. GODESKY: Thank you, Your Honor.  2 THE COURT: Ninety percent of problems are solved  3 by rebooting.  4 MS. GODESKY: Your Honor, can you switch over to  5 plaintiff so we can see if he's able to connect?  6 THE COURT: He's up.  7 MS. GODESKY: You have a connection?  8 MR. MAYLEBEN: Yes.  9 THE COURT: Let me try rebooting one more time  10 with a little bit more time delay. I'll have to sit here  11 for 60 second, but . . .  12 We have IT on our way up. Do you want to start?  13 MS. GODESKY: Are you seeing signs of action?  14 THE COURT: There we go. Something just flashed.  15 MS. WHEELER: My apologies to the Court, Your  16 Honor.  17 THE COURT: That's quite all right. Did we get  18 it?  19 MS. WHEELER: We did, yes, sir.  20 THE COURT: There we go.  21 MS. GODESKY: Yes.  22 BY MS. GODESKY:  23 <b>Q.</b> So, Mr. Zoltowski, we were talking about what you would  24 describe as this pooling agreement between Federal and  25 Vigilant, correct?</p>
<p style="text-align: right;">1335</p> <p>1 in this case.  2 During the second half of your testimony with  3 Ms. Kliebenstein, you talked about certain pooling  4 agreements. Do you remember that?  5 <b>A.</b> Yes.  6 <b>Q.</b> And you talked about a pooling agreement between Federal  7 and Vigilant?  8 <b>A.</b> Yes.  9 <b>Q.</b> And you talked about how that agreement meant that  10 Federal is empowered on behalf of Vigilant to do certain  11 things. Does that sound like your testimony?  12 <b>A.</b> Yes, and that's based on what was in the agreement  13 itself.  14 <b>Q.</b> Okay. Let's, Vanessa, if we could, pull up Exhibit P21  15 in evidence.  16 MS. GODESKY: She doesn't have a signal to the  17 monitor.  18 THE COURT: Well, I don't control that signal.  19 The monitor is switched so that your side is presenting.  20 Ladies and gentlemen, you can stand up if you'd  21 like while we're waiting for this technological glitch.  22 Would you like me to turn off all the monitors and  23 turn them back on?  24 MS. WHEELER: That would not be a bad idea. Thank  25 you, Your Honor.</p>	<p style="text-align: right;">1337</p> <p>1 <b>A.</b> That's correct.  2 <b>Q.</b> And I just want to take a look at, this first paragraph  3 of this agreement talks about how, "The addendum to be  4 attached and form a part of the management agreement (the  5 agreement) effective the 1st day of January, 1998, between  6 Vigilant Insurance Company and Chubb &amp; Son, a division of  7 Federal Insurance Company," and then that's defined as  8 manager, correct?  9 <b>A.</b> Yes. That's correct.  10 <b>Q.</b> And then during your direct examination, you made a  11 point of highlighting the fourth page of the agreement.  12 If we could turn there, Vanessa.  13 And you pointed out how the fourth page of the  14 agreement at the top identifies Vigilant Insurance Company  15 as the company, right?  16 <b>A.</b> Correct.  17 <b>Q.</b> And then you said, it also identifies Federal Insurance  18 Company as the manager, right?  19 <b>A.</b> Yes.  20 <b>Q.</b> And you kept referring to Federal under this contract  21 because you understand that Chubb &amp; Son Division was signing  22 the agreement on behalf of Federal, correct?  23 <b>A.</b> Chubb &amp; Son is a division of Federal.  24 <b>Q.</b> And you described this as an agreement between Vigilant  25 and Federal because you understood the Chubb &amp; Son Division</p>



<p style="text-align: right;">1338</p> <p>1 was signing on behalf of Federal, correct?</p> <p>2 <b>A.</b> I can't tell you if they'd signed on behalf of Chubb &amp;</p> <p>3 Son, but they're a division of Federal, and they're the ones</p> <p>4 who signed the agreement.</p> <p>5 <b>Q.</b> And you characterized this as an agreement between</p> <p>6 Federal and Vigilant, correct, Mr. Zoltowski?</p> <p>7 <b>A.</b> Based upon, you know, my analysis because that's what I</p> <p>8 was looking at was Federal.</p> <p>9 <b>Q.</b> Now, you generally spent a lot of time --</p> <p>10 We can take that down, Vanessa. Thank you.</p> <p>11 You spent a lot of time during your direct</p> <p>12 examination talking about subsidiaries and pooling</p> <p>13 agreements, right?</p> <p>14 <b>A.</b> Yes.</p> <p>15 <b>Q.</b> And at one point you referenced companies that might</p> <p>16 structure themselves in certain ways to avoid liability, and</p> <p>17 you gave an example of alter ego cases. Do you remember</p> <p>18 that?</p> <p>19 <b>A.</b> Yeah. I'm not sure if they were the same comments at</p> <p>20 the same time, but I spoke about both those topics.</p> <p>21 <b>Q.</b> And this is not an alter ego case, right?</p> <p>22 <b>A.</b> No.</p> <p>23 <b>Q.</b> Now, you went to Trinity College in Connecticut and</p> <p>24 obtained a Bachelor of Arts Degree, right?</p> <p>25 <b>A.</b> Yes. That's correct.</p>	<p style="text-align: right;">1340</p> <p>1 <b>A.</b> No, I'm not.</p> <p>2 <b>Q.</b> And you're not presenting yourself as a software</p> <p>3 industry expert either, correct?</p> <p>4 <b>A.</b> No. I've done lots and lots of software cases in the</p> <p>5 intellectual property world, but I'm not a software expert,</p> <p>6 no.</p> <p>7 <b>Q.</b> And that also means you're not an expert in decision</p> <p>8 management software or Blaze in particular, correct?</p> <p>9 <b>A.</b> No. I've had other cases related to this type of</p> <p>10 software, but no, I'm not an expert in it.</p> <p>11 <b>Q.</b> Okay. Now, the opinions that you gave about Chubb's</p> <p>12 revenue relate to damages that FICO is asking for in</p> <p>13 connection with its copyright infringement claims, correct?</p> <p>14 <b>A.</b> Correct.</p> <p>15 <b>Q.</b> And at one point at the beginning of your testimony, you</p> <p>16 said you were retained to provide opinions related to gross</p> <p>17 written opinions related to copyright infringement by</p> <p>18 defendants. So I just want to be very clear here that you</p> <p>19 were asked by FICO's lawyers to assume, in rendering your</p> <p>20 opinions, that defendants are actually liable for</p> <p>21 infringement, right? That was an assumption.</p> <p>22 <b>A.</b> Yes, it's an assumption I would need to make for damages</p> <p>23 to actually accrue.</p> <p>24 <b>Q.</b> Defendants have not been found liable for copyright</p> <p>25 infringement, correct?</p>
<p style="text-align: right;">1339</p> <p>1 <b>Q.</b> That is your only advanced degree. You don't have a</p> <p>2 master's or a doctorate, correct?</p> <p>3 <b>A.</b> Correct.</p> <p>4 <b>Q.</b> And you hold yourself out as an economic damages expert,</p> <p>5 correct?</p> <p>6 <b>A.</b> That's correct.</p> <p>7 <b>Q.</b> You are not a Certified Public Accountant?</p> <p>8 <b>A.</b> No, I'm not.</p> <p>9 <b>Q.</b> And you don't hold yourself out as a tax expert?</p> <p>10 <b>A.</b> Definitely not.</p> <p>11 <b>Q.</b> And you have never worked at an insurance company in any</p> <p>12 role, whether it be IT or underwriting or otherwise, right?</p> <p>13 <b>A.</b> I worked for AAA at one point, but it wasn't really part</p> <p>14 of the insurance part. They do have insurance, but that's</p> <p>15 about it.</p> <p>16 <b>Q.</b> Never been an underwriter, Mr. Zoltowski, right?</p> <p>17 <b>A.</b> I have not.</p> <p>18 <b>Q.</b> And you never worked in IT at an insurance company?</p> <p>19 <b>A.</b> No.</p> <p>20 <b>Q.</b> And you went through on direct examination your general</p> <p>21 understanding of all these computer applications at Chubb</p> <p>22 that included Blaze, correct?</p> <p>23 <b>A.</b> Yes.</p> <p>24 <b>Q.</b> But you are not holding yourself out as an expert in</p> <p>25 insurance, right?</p>	<p style="text-align: right;">1341</p> <p>1 <b>A.</b> Not yet.</p> <p>2 <b>Q.</b> And that is a determination for the jury, not you,</p> <p>3 correct?</p> <p>4 <b>A.</b> Correct. Correct.</p> <p>5 <b>Q.</b> Now, before you rendered your expert opinions in this</p> <p>6 case, you spoke to Mr. Bill Waid at FICO, right?</p> <p>7 <b>A.</b> Yes.</p> <p>8 <b>Q.</b> And then you also spoke to FICO's expert on the</p> <p>9 purported value of Blaze to Chubb, and that's Mr. Bick</p> <p>10 Whitener, right?</p> <p>11 <b>A.</b> I spoke with Bick about various topics, but that might</p> <p>12 have been one of them.</p> <p>13 <b>Q.</b> And you spoke to him two or three times, each between</p> <p>14 about 30 minutes and an hour?</p> <p>15 <b>A.</b> I don't recall, but that sounds about right.</p> <p>16 <b>Q.</b> Now, during your direct examination when you're talking</p> <p>17 about revenue, you talked about a big gross written premium</p> <p>18 number, \$21 billion, right?</p> <p>19 <b>A.</b> Correct.</p> <p>20 <b>Q.</b> And in the world of insurance, we can agree that the</p> <p>21 phrase "gross written premium" is referred to as revenue,</p> <p>22 right? That's the money coming in the door.</p> <p>23 <b>A.</b> Correct.</p> <p>24 <b>Q.</b> And all of the revenue numbers that you highlighted and</p> <p>25 you read into the record during your examination, those are</p>



<p style="text-align: right;">1358</p> <p>1 reviewed their rules. And as I reviewed the rules, I wanted</p> <p>2 to make sure that I had a clear -- that my thoughts about it</p> <p>3 made sense.</p> <p>4 So I spoke with a gentleman named Brian Sacco, who</p> <p>5 is highly knowledgeable about rule repositories. He is not</p> <p>6 a FICO employee, so just to make sure that I understood and</p> <p>7 completely grasped and my thoughts were accurate.</p> <p>8 <b>Q.</b> And when you referenced a rules repository, did you</p> <p>9 understand that to be the defendants' rules repository from</p> <p>10 their Blaze Advisor software that they had, you know, in</p> <p>11 their -- it came from the defendants, and it was the rules</p> <p>12 repository of Blaze Advisor?</p> <p>13 <b>A.</b> Yes, I believe it was absent any of the rules that would</p> <p>14 have applied to their policy administration system in Europe</p> <p>15 called EZER. I think it had been retired, and so I didn't</p> <p>16 get those rules, which was fine.</p> <p>17 <b>Q.</b> And with that exception, you had the rules for all of</p> <p>18 the other applications that ran Blaze Advisor or where Blaze</p> <p>19 Advisor was a component at the defendants?</p> <p>20 <b>A.</b> Yes.</p> <p>21 <b>Q.</b> So that is a case summary overview of the case specific</p> <p>22 facts that you looked at. I'd like to turn to your</p> <p>23 experience in the insurance industry so we can understand</p> <p>24 what you brought into that analysis of those case-specific</p> <p>25 facts.</p>	<p style="text-align: right;">1360</p> <p>1 <b>A.</b> Sure. Bickley &amp; Company is a boutique property casualty</p> <p>2 consulting entity. My elevator speech is actually really</p> <p>3 very simple. I make change happen for property casualty</p> <p>4 insurance companies or for the vendors who sell goods and</p> <p>5 services to them.</p> <p>6 Bickley &amp; Company is 1.1 person. I'm bless to</p> <p>7 have any wife make travel arrangements and run the books and</p> <p>8 send out the invoices and things like that, but it's</p> <p>9 primarily me.</p> <p>10 <b>Q.</b> Okay. Let's go to the overview of your experience</p> <p>11 before Bickley &amp; Company. You said you started at the</p> <p>12 Hartford in 1977?</p> <p>13 <b>A.</b> Yes, October 24th to be exact.</p> <p>14 <b>Q.</b> All right. And Hartford is a property and casualty</p> <p>15 insurance company?</p> <p>16 <b>A.</b> It is. When I left them, they were, I believe, the</p> <p>17 number ten property casualty insurance company with premium</p> <p>18 in the \$8.5 billion range, multi-lines, all 51</p> <p>19 jurisdictions. And when I say "51 jurisdictions," I'm</p> <p>20 taking the 50 states plus the District of Columbia. That</p> <p>21 actually is an insurance jurisdiction.</p> <p>22 <b>Q.</b> Would you look at -- in your book there's an</p> <p>23 Exhibit 857.</p> <p>24 <b>A.</b> Bear with me.</p> <p>25 <b>Q.</b> Sure.</p>
<p style="text-align: right;">1359</p> <p>1 If we could go to slide 5, Mr. Mayleben.</p> <p>2 How many years have you been in the insurance</p> <p>3 industry?</p> <p>4 <b>A.</b> From the time I started at the Hartford in October of</p> <p>5 1977 until now is approximately 45 years, 44 of those have</p> <p>6 been dedicated to the property casualty insurance universe.</p> <p>7 I took one year off and worked for the American Red Cross in</p> <p>8 the state of Alabama. But other than that, it's been</p> <p>9 property casualty insurance.</p> <p>10 <b>Q.</b> And on the screen, is this an accurate presentation of</p> <p>11 your resumé?</p> <p>12 <b>A.</b> Yes.</p> <p>13 <b>Q.</b> Before we get into your prior experience with other</p> <p>14 insurance companies, let's touch base on your current</p> <p>15 employment, and what is that?</p> <p>16 <b>A.</b> I am the principal of a small P &amp; C consulting firm</p> <p>17 named Bickley &amp; Company.</p> <p>18 <b>Q.</b> And that's at your home in Harvest, Alabama?</p> <p>19 <b>A.</b> I operate out of my office in my home in Alabama and am</p> <p>20 there generally until somebody engages me and needs me to be</p> <p>21 somewhere else.</p> <p>22 <b>Q.</b> And you started with Bickley &amp; Company when?</p> <p>23 <b>A.</b> July the 8th -- no. I'm sorry. July the 5th, 2014.</p> <p>24 <b>Q.</b> And what is Bickley &amp; Company? Could you give us an</p> <p>25 overview description?</p>	<p style="text-align: right;">1361</p> <p>1 <b>A.</b> Are they numerically numbered?</p> <p>2 <b>Q.</b> Yes, they are. They go from the smallest to the biggest</p> <p>3 number.</p> <p>4 <b>A.</b> So this will be at the back. I'll point out I wasn't</p> <p>5 engaged for my manual dexterity.</p> <p>6 <b>Q.</b> It's a big book.</p> <p>7 <b>A.</b> 0857?</p> <p>8 <b>Q.</b> That's correct.</p> <p>9 <b>A.</b> I'm there, sir.</p> <p>10 <b>Q.</b> All right. And again, as it is on the screen, is that</p> <p>11 an accurate statement of -- is that an -- that's an accurate</p> <p>12 resumé?</p> <p>13 <b>A.</b> It is accurate and current.</p> <p>14 <b>MR. HINDERAKER:</b> Your Honor, I offer Exhibit 857.</p> <p>15 <b>MS. GODESKY:</b> No objection.</p> <p>16 <b>THE COURT:</b> Exhibit 857 is received.</p> <p>17 <b>BY MR. HINDERAKER:</b></p> <p>18 <b>Q.</b> And as you started off to explain, you started at the</p> <p>19 Hartford. I think I'd just like to note, and then we'll go</p> <p>20 into your specific experience, Mr. Whitener. I'd like to</p> <p>21 note that you started at the Hartford, and you've been at</p> <p>22 these various, over the last 44 years, other companies in</p> <p>23 the industry of insurance.</p> <p>24 Is that a fair overall summary?</p> <p>25 <b>A.</b> It is a fair overall summary. Allow me to say, I</p>

<p style="text-align: right;">1362</p> <p>1 consider myself to be one of the most blessed men in the</p> <p>2 industry. I've -- I've been allowed to branch out and not</p> <p>3 get pigeon hole siloed into a specific function and do a lot</p> <p>4 of different things.</p> <p>5 <b>Q.</b> Well, then let's turn to that.</p> <p>6 If we could have slide 6, please.</p> <p>7 Over your 44 years, have you been involved in each</p> <p>8 of these seven different functions or roles within the</p> <p>9 insurance industry?</p> <p>10 <b>A.</b> I have.</p> <p>11 <b>Q.</b> So let's just go across the top.</p> <p>12 <b>A.</b> Point of clarification, sir.</p> <p>13 <b>Q.</b> Yes.</p> <p>14 <b>A.</b> Is this in here?</p> <p>15 <b>Q.</b> The slide?</p> <p>16 <b>A.</b> Yeah.</p> <p>17 <b>Q.</b> The slide should be on the screen.</p> <p>18 <b>A.</b> Yeah. But then I'm --</p> <p>19 <b>Q.</b> No. You have to look at the screen.</p> <p>20 <b>A.</b> Look at the screen. Got it.</p> <p>21 <b>Q.</b> Okay. So let's first talk about your personal</p> <p>22 experience with underwriting. And as I understand it, there</p> <p>23 are two types of underwriting: Corporate underwriting and</p> <p>24 front line underwriting?</p> <p>25 <b>A.</b> Yes, I describe it that way.</p>	<p style="text-align: right;">1364</p> <p>1 responsibilities, really. The first one is to execute those</p> <p>2 strategies and tactics as it relates to the process of</p> <p>3 selling insurance. The second one is, in selling insurance,</p> <p>4 they have this group of people called independent agents and</p> <p>5 brokers.</p> <p>6 A big part of independent agents and brokers and</p> <p>7 insurance company offering products to be sold to the</p> <p>8 purchasing population, be it personal or commercial, a big</p> <p>9 part of that is relationship management. It is the</p> <p>10 responsibility of the front line underwriters to execute</p> <p>11 those strategies and tactics and to manage the relationships</p> <p>12 with the independent agents and brokers.</p> <p>13 <b>Q.</b> When you started with the Hartford, did you start in the</p> <p>14 front line underwriting?</p> <p>15 <b>A.</b> I did. I was a front line underwriter in East Hartford,</p> <p>16 Connecticut. I was actually hired by the Richmond office</p> <p>17 but immediately transferred to Hartford, Connecticut. I</p> <p>18 participated for about four months in what they call an OJT,</p> <p>19 an on-job trainee program, being taught the underwriting</p> <p>20 process.</p> <p>21 Also taught a few of the products -- the policy</p> <p>22 types. And then I -- when I finished that program, I moved</p> <p>23 into an underwriting position in East Hartford until I was</p> <p>24 subsequently sent to the Washington, D.C. office as a</p> <p>25 promotion and a transfer into another underwriting function.</p>
<p style="text-align: right;">1363</p> <p>1 <b>Q.</b> So let's start with corporate underwriting.</p> <p>2 <b>A.</b> All right.</p> <p>3 <b>Q.</b> First tell us what it is and then tell us what your</p> <p>4 experience has been with it.</p> <p>5 <b>A.</b> Certainly. The corporate underwriting function is that</p> <p>6 part of an insurance company where the appetite for risk --</p> <p>7 every insurance company has those types of policies that</p> <p>8 they want to write. They have that amount of risk that</p> <p>9 they're willing to take.</p> <p>10 Inside of that, they have the definition of the</p> <p>11 products that they're going to sell. They have the</p> <p>12 definition of the jurisdictions in which they want to sell</p> <p>13 them. Corporate underwriting does all of that. It's</p> <p>14 defining the strategies and the tactics that the insurance</p> <p>15 company is going to use to execute their selling of</p> <p>16 insurance process.</p> <p>17 <b>Q.</b> Okay. And then let's go to front line underwriting.</p> <p>18 Tell us what that is and what your experience has been.</p> <p>19 <b>A.</b> Certainly. Front line underwriting is that part of the</p> <p>20 process that executes the strategies and the tactics defined</p> <p>21 by the corporate level. I call it front line underwriting</p> <p>22 because the corporate level you generally find in corporate</p> <p>23 offices, whereas the front line underwriting you find them</p> <p>24 out in field offices.</p> <p>25 The front line underwriting has two</p>	<p style="text-align: right;">1365</p> <p>1 And then I was in Washington, D.C. I think about</p> <p>2 18 months, and somebody figured out I could do math.</p> <p>3 <b>Q.</b> Okay. While you were -- while you were responsible for</p> <p>4 front line underwriting, was there a period of time where</p> <p>5 you had a number of people reporting to you all engaged in</p> <p>6 the --</p> <p>7 <b>A.</b> Yes.</p> <p>8 <b>Q.</b> -- effort of underwriting?</p> <p>9 <b>A.</b> Yes, but not in the time frames I have been discussing.</p> <p>10 <b>Q.</b> Okay.</p> <p>11 <b>A.</b> So if you'll allow me, I mentioned that somebody</p> <p>12 discovered I could do math, and so they brought me out of</p> <p>13 Washington, D.C. back up to the headquarters in Hartford,</p> <p>14 Connecticut, and I fulfilled a number of functions, as</p> <p>15 outlined here, and I'm sure you're going to ask me about</p> <p>16 those. I'm confident you're going to ask me about those,</p> <p>17 until the point where they sent me to Charlotte, North</p> <p>18 Carolina in a -- we called it a center, but functionally a</p> <p>19 field office.</p> <p>20 And I went there as part of the management team.</p> <p>21 I was the agency services manager was the title. I had</p> <p>22 about 122 people working for me. I had the new business</p> <p>23 process -- underwriting and processing unit. I had the</p> <p>24 renewal underwriting, new business and processing unit. I</p> <p>25 had the endorsement, which means make a change to a policy,</p>

<p style="text-align: right;">1366</p> <p>1 an existing policy.</p> <p>2 I had the endorsement underwriting group working</p> <p>3 with me and a few other ancillary departments.</p> <p>4 <b>Q.</b> All right. Then let's move on to the next category of</p> <p>5 experience, financial management and reporting. Is that a</p> <p>6 corporate function or a front line function?</p> <p>7 <b>A.</b> No. No. It's a corporate function, and this is one of</p> <p>8 the functions that's not really related to the front line</p> <p>9 selling of insurance process. It is, however, a process of</p> <p>10 looking at the results from that selling process. So my</p> <p>11 responsibility there was to collect data, to analyze data,</p> <p>12 to put together -- I called it navigational reports. Here</p> <p>13 are the key performance indicators for these products. This</p> <p>14 is what our budgeted performance indicator result was to be.</p> <p>15 Here's where it is now.</p> <p>16 And if it's -- if it's at budget or better, you</p> <p>17 get the privilege of smiling, and if it's not, you get the</p> <p>18 privilege of talking about remedial action.</p> <p>19 <b>Q.</b> Your personal experience with planning, what is that and</p> <p>20 what did you do?</p> <p>21 <b>A.</b> For the -- this is a Hartford Insurance industry</p> <p>22 experience back in the early 1980s. Corporate -- corporate</p> <p>23 Hartford had a responsibility for all of its lines of</p> <p>24 business, and I'm sorry. Line of business means a group of</p> <p>25 products.</p>	<p style="text-align: right;">1368</p> <p>1 president of underwriting. We organized specialty insurance</p> <p>2 a little bit differently, so there were a couple of vice</p> <p>3 presidents of underwriting for that. I was in the office of</p> <p>4 the vice president of underwriting for the personal</p> <p>5 insurance division.</p> <p>6 But the job was to take those planning processes,</p> <p>7 create those plans, and get them into the office of the CEO</p> <p>8 by a time frame.</p> <p>9 <b>Q.</b> Thank you. Now let's go to product development.</p> <p>10 Similarly, if you would tell us what that is and what your</p> <p>11 experience was -- has been.</p> <p>12 <b>A.</b> Product development can be two things. The first one is</p> <p>13 we -- the insurance industry is always looking to innovate.</p> <p>14 I know that sounds strange, but we're always looking to</p> <p>15 innovate. And so this could be creation of a new product</p> <p>16 type, one of the new product types --</p> <p>17 This happened in the mid -- mid-1980s, this new</p> <p>18 high fangled thing that made it into the marketplace, it was</p> <p>19 called a personal computer. And so we -- they asked me, and</p> <p>20 I created a personal computer -- I'm sorry -- personal</p> <p>21 computer endorsement that would be an endorsement added to a</p> <p>22 homeowner's policy to be able to provide more robust</p> <p>23 coverage for personal computers because the homeowner's</p> <p>24 policy actually covered it, but not adequately for the risk</p> <p>25 that was involved in owning one.</p>
<p style="text-align: right;">1367</p> <p>1 So in the world that we live in today, most of us</p> <p>2 in here have a -- we have an auto policy. A private</p> <p>3 passenger auto is considered a line of business. We have a</p> <p>4 homeowner's policy. Homeowner's is considered a line of</p> <p>5 business. There are a whole bunch of them in the insurance</p> <p>6 industry.</p> <p>7 I believe Hartford had 27, approximately, lines of</p> <p>8 business and about 14 writing companies. You've heard that</p> <p>9 word before. My job in corporate planning was to manage and</p> <p>10 complete three planning cycles a year. So the first thing</p> <p>11 we did was look at current year and five years into the</p> <p>12 future, a strategic plan, if you will.</p> <p>13 Then when that was done, I got to breathe for 30</p> <p>14 days, and then we would put together what we called an</p> <p>15 operating plan, which was again a revisiting of the current</p> <p>16 year but then next year and the following year. And when I</p> <p>17 finished I should that, I got another 30 days to breathe,</p> <p>18 and we put together --</p> <p>19 And this was usually happening in or around</p> <p>20 September, October. We started work on our budget for next</p> <p>21 year for all of the products. That planning process</p> <p>22 encompassed all of the market segments, all of the lines of</p> <p>23 business.</p> <p>24 I was in the offices of the commercial casualty,</p> <p>25 vice president of underwriting, the commercial property vice</p>	<p style="text-align: right;">1369</p> <p>1 Another thing I did was, the Hartford had a</p> <p>2 managing general agent out in the Midwest that wanted a</p> <p>3 combined -- a combined policy, an automobile policy and a</p> <p>4 homeowner's policy in one policy. So the policy -- the</p> <p>5 applicant or the policyholder would only have to deal one</p> <p>6 time a year with the insurance policy.</p> <p>7 So I took the two policies, and I put them</p> <p>8 together into one policy and did all of the work that was</p> <p>9 required for that. And that's what brought me into the</p> <p>10 world of insurance technology, because you don't want to</p> <p>11 manually issue the policies. You want the computer to do</p> <p>12 it.</p> <p>13 <b>Q.</b> We'll get back to that.</p> <p>14 Let's go on to your product management. If you</p> <p>15 would tell us what it is and what your experience has been.</p> <p>16 <b>A.</b> Certainly. The product management function is a part of</p> <p>17 that corporate underwriting process I talk about. So when</p> <p>18 you think about, we're going to define our appetite for</p> <p>19 risk, we're going to define what states, what products we</p> <p>20 want to sell.</p> <p>21 Once you get through those decisions, you have to</p> <p>22 start working from state regulators because in the United</p> <p>23 States of America, insurance is regulated at the state level</p> <p>24 inclusive of Washington, D.C. which is technically not a</p> <p>25 state. It's a jurisdiction.</p>

<p style="text-align: right;">1370</p> <p>1 So there were 51 departments of insurance that we</p> <p>2 had to deal with. Every product has to be filed, and the</p> <p>3 state carries an approval right. And that filing has to do</p> <p>4 with the rate you're going to use, the coverages that are</p> <p>5 included in the policy and the rules that you're going to</p> <p>6 use.</p> <p>7 <b>Q.</b> Then let's move on to field operations management. What</p> <p>8 is it and what have you done in that area?</p> <p>9 <b>A.</b> This is, again, the reference to my being the new</p> <p>10 business, the renewal business, the endorsement underwriting</p> <p>11 responsible manager in Charlotte, North Carolina, when I</p> <p>12 went down to that insurance center.</p> <p>13 <b>Q.</b> What was the geographical scope of that responsibility?</p> <p>14 <b>A.</b> We had the southeast. I believe we had nine or ten</p> <p>15 states. We had Virginia. We had North Carolina. We went</p> <p>16 all the way down to Florida. We went over to Mississippi.</p> <p>17 <b>Q.</b> And then if you would -- your experience with</p> <p>18 business -- with business management of technology or your</p> <p>19 experience with technology used in selling insurance.</p> <p>20 <b>A.</b> Certainly. The underwriting department of an insurance</p> <p>21 company has a finite amount of programming resources</p> <p>22 available to it. There are certain things that those</p> <p>23 technology people need to succeed.</p> <p>24 One is clear and well-defined and articulated</p> <p>25 business requirements. And in some of the testimony that</p>	<p style="text-align: right;">1372</p> <p>1 <b>A.</b> I have, twice.</p> <p>2 Mr. Hinderaker, let me time you out for about two</p> <p>3 seconds.</p> <p>4 <b>Q.</b> Absolutely.</p> <p>5 THE COURT: Mr. Hinderaker, are you at a</p> <p>6 convenient breaking point?</p> <p>7 MR. HINDERAKER: You know, with less than five</p> <p>8 minutes I am. If we want to -- I can do it right now, of</p> <p>9 course.</p> <p>10 THE COURT: No. That's okay. Finish this line</p> <p>11 and we'll go then.</p> <p>12 MR. HINDERAKER: That's great.</p> <p>13 THE WITNESS: I am ready, sir.</p> <p>14 BY MR. HINDERAKER:</p> <p>15 <b>Q.</b> Also, have you had prior experience with implementing a</p> <p>16 billing and claims technology called Insuresoft?</p> <p>17 <b>A.</b> Insuresoft is a full insurance suite. It has policy</p> <p>18 admin. It has claims. It has billing. It has management</p> <p>19 reporting. So, yes, I have -- I've actually installed that</p> <p>20 at a start-up MGA. I functioned as the chief operating</p> <p>21 officer of the MGA while we brought it up out of the ground.</p> <p>22 <b>Q.</b> Okay. Have you had any prior experience before being</p> <p>23 engaged by FICO with the Blaze Advisor business rules</p> <p>24 management software system?</p> <p>25 <b>A.</b> I have not.</p>
<p style="text-align: right;">1371</p> <p>1 we've heard leading up to now, the -- you've heard about</p> <p>2 business analysts and business requirements. Inside of -- I</p> <p>3 hope I get this name right -- inside of I believe Mr. Ivey's</p> <p>4 testimony, he talked about FICO's 4D defined.</p> <p>5 Defined is business requirements. The technology</p> <p>6 people can't build if they don't know what they have to</p> <p>7 build. In addition to that, I ran into a situation where</p> <p>8 the ten-pound bag of potatoes, if you'll allow me that</p> <p>9 analogy, had a request for about a hundred pounds of</p> <p>10 potatoes. And the technology department was struggling with</p> <p>11 what should I be working on this month?</p> <p>12 And they came to my upline, and my upline gave me</p> <p>13 the responsibility of determining the priorities for the use</p> <p>14 of those data processing technology resources.</p> <p>15 <b>Q.</b> Was that an occasion when you were a bridge between the</p> <p>16 business --</p> <p>17 <b>A.</b> Yeah.</p> <p>18 <b>Q.</b> -- and the technologist?</p> <p>19 <b>A.</b> Yes. My wife describes me as sort of the United</p> <p>20 Nations. I speak -- I speak business requirements. I speak</p> <p>21 detail. I speak technology. But I'm also able to meet with</p> <p>22 the technology people and speak technology to the business</p> <p>23 people in such a way that they'll understand it.</p> <p>24 <b>Q.</b> Have you had prior experience with the Duck Creek policy</p> <p>25 administration system?</p>	<p style="text-align: right;">1373</p> <p>1 <b>Q.</b> So is it fair to say you came to the engagement without</p> <p>2 any preconceived notions about Blaze Advisor?</p> <p>3 <b>A.</b> That is correct.</p> <p>4 MR. HINDERAKER: Your Honor, before going further,</p> <p>5 the testimony of Mr. Whitener will be direct -- expert</p> <p>6 testimony directed to the insurance industry, the experience</p> <p>7 and expertise on the process of selling insurance, the use</p> <p>8 of technology in selling insurance, in the process of</p> <p>9 selling insurance, and then his knowledge gained from the</p> <p>10 analysis of the case-specific facts from the defendants</p> <p>11 regarding Blaze Advisor and their applications.</p> <p>12 I offer his testimony for those purposes.</p> <p>13 MS. GODESKY: We have an objection, Your Honor.</p> <p>14 THE COURT: All right. Why don't we do this:</p> <p>15 Let's take our afternoon break. We'll take that up over the</p> <p>16 break. And, members of the jury, why don't you be back at</p> <p>17 25 minutes after 3:00 on that clock. Okay?</p> <p>18 (Jury leaves courtroom.)</p> <p>19 THE COURT: Let's take this up at 20 minutes after</p> <p>20 3:00. Give ourselves five minutes to do that. Give the</p> <p>21 court reporter a break.</p> <p>22 (Recess taken.)</p> <p>23 (In open court without the Jury present.)</p> <p>24 THE COURT: Ms. Godesky, you have an objection to</p> <p>25 Mr. Whitener's testimony; is that correct?</p>

<p style="text-align: right;">1374</p> <p>1 MR. HINDERAKER: Maybe, Your Honor, before we get</p> <p>2 to that, I can be very clear about the purpose for which his</p> <p>3 testimony is being offered.</p> <p>4 THE COURT: Sure.</p> <p>5 MR. HINDERAKER: His purpose -- his testimony is</p> <p>6 being offered to inform the jury regarding the process of</p> <p>7 selling insurance, regarding the things that matter in that</p> <p>8 process to selling more insurance or selling less insurance.</p> <p>9 He has been engaged to -- and he has experience in</p> <p>10 not only front line underwriting but corporate product</p> <p>11 development, so he has knowledge with respect to those</p> <p>12 things. And he has, as you heard, studied 10,000-plus pages</p> <p>13 of the defendants' documents to analyze from his expertise</p> <p>14 how the defendants were using -- how the defendants used</p> <p>15 Blaze Advisor, in their words.</p> <p>16 He is not offered a Blaze Advisor expert or as</p> <p>17 somebody who with Blaze Advisor expertise connects Blaze</p> <p>18 Advisor to the selling of insurance. We've heard</p> <p>19 Mr. Baseman, Mr. Ivey, Mr. Baer, Mr. Marce regarding the</p> <p>20 qualities or attributes that Blaze Advisor brings to the</p> <p>21 industry.</p> <p>22 And now we're looking it -- taking it from the</p> <p>23 other side, with Mr. Whitener telling us, well, how does the</p> <p>24 insurance industry work and how is insurance sold, and he</p> <p>25 has experience with technology. I'm not pretending him to</p>	<p style="text-align: right;">1376</p> <p>1 The last slide, "FICO Blaze Advisor added</p> <p>2 significant value to defendants' business."</p> <p>3 Slide 73, "Defendants needed Blaze Advisor to sell</p> <p>4 insurance in underpenetrated markets."</p> <p>5 And when you look at the text of his disclosed</p> <p>6 reports, the headers in the reports are Blaze Advisor's</p> <p>7 Contribution to Gross Written Premium, Chubb's use of Blaze</p> <p>8 Advisor Contributes to Gross Written Premium.</p> <p>9 And we have an objection to Mr. Whitener</p> <p>10 testifying about the value or contribution of Blaze or even</p> <p>11 decision management software generally, because I would like</p> <p>12 to do a voir dire of the expert and show that he has no</p> <p>13 experience in that area. And so you cannot create an expert</p> <p>14 by having them study in the context of litigation.</p> <p>15 He needed to be retained with the expertise that's</p> <p>16 required under Rule 702.</p> <p>17 THE COURT: But his experience and qualifications,</p> <p>18 if I'm remembering Judge Wright's order correctly, I believe</p> <p>19 she said that no -- no objection was made to his experience</p> <p>20 or qualifications and then denied the motion to exclude</p> <p>21 based on the objections that were made.</p> <p>22 Am I accurately recalling what she said?</p> <p>23 MS. GODESKY: She said that it was raised in</p> <p>24 reply, and so she was not going to consider it. But it is</p> <p>25 absolutely not waived because you have no obligation to</p>
<p style="text-align: right;">1375</p> <p>1 be a Blaze Advisor, but he does -- he has studied the</p> <p>2 defendants' use of Blaze Advisor, if that's more clear.</p> <p>3 THE COURT: And I'm assuming that all of the</p> <p>4 opinions you intend to elicit are the ones that were</p> <p>5 disclosed in his report.</p> <p>6 MR. HINDERAKER: Absolutely.</p> <p>7 THE COURT: I suspect I know what I'm going to</p> <p>8 hear from Ms. Godesky, and that is that you described him as</p> <p>9 testifying to the value of Blaze Advisor, but maybe I'll</p> <p>10 hear something else, but I understand what you're telling</p> <p>11 me.</p> <p>12 MR. HINDERAKER: Yeah. And that value</p> <p>13 proposition, if you will, is going to come from his analysis</p> <p>14 of these case-specific facts. So it comes from, if you</p> <p>15 will, the bottom up, the case-specific facts, not some Blaze</p> <p>16 Advisor expertise top-down.</p> <p>17 THE COURT: And he's not offering damage numbers?</p> <p>18 MR. HINDERAKER: He's not offering damage numbers.</p> <p>19 THE COURT: Ms. Godesky?</p> <p>20 MS. GODESKY: Your Honor, slide 3 in their</p> <p>21 presentation for Mr. Whitener --</p> <p>22 THE COURT: I may be wrong.</p> <p>23 MS. GODESKY: Summary of opinions. "Blaze Advisor</p> <p>24 added significant value to the process of selling insurance</p> <p>25 and hence added significant value to defendants' business."</p>	<p style="text-align: right;">1377</p> <p>1 challenge qualifications under Rule 702 in a <i>Daubert</i> motion,</p> <p>2 and we can do so now.</p> <p>3 THE COURT: I understand.</p> <p>4 MR. HINDERAKER: Again, if I could repeat myself a</p> <p>5 bit. It's -- looking at the defendants' documents without</p> <p>6 having expertise in the insurance industry doesn't tell you</p> <p>7 the picture that comes with studying how defendants use</p> <p>8 Blaze Advisor with that knowledge from the insurance</p> <p>9 industry.</p> <p>10 So why did -- why did something matter -- why did</p> <p>11 what the defendants were doing with Blaze Advisor matter?</p> <p>12 It mattered because in the process of selling insurance,</p> <p>13 that effect -- that attribute affects the outcome of the</p> <p>14 selling process.</p> <p>15 So I don't mind the jury being quite clear that</p> <p>16 he's not a Blaze Advisor expert. He's an insurance industry</p> <p>17 expert.</p> <p>18 MS. GODESKY: Your Honor, his opinions go far</p> <p>19 beyond that as disclosed on the slides and in his report.</p> <p>20 If he was simply offering opinions about, this is the</p> <p>21 process of selling insurance and certain things are</p> <p>22 important in the process of selling insurance, that might be</p> <p>23 appropriate.</p> <p>24 But he was disclosed as an expert who offered</p> <p>25 opinions on how Blaze contributed to gross written premium</p>



<p style="text-align: right;">1378</p> <p>1 at Chubb, and he does not have the expertise to offer those</p> <p>2 opinions.</p> <p>3 MR. HINDERAKER: Well, that's not exactly accurate</p> <p>4 because the testimony is that if you can -- that defendants,</p> <p>5 in fact, achieved certain outcomes using Blaze Advisor, by</p> <p>6 the defendants own statements. And those outcomes mattered</p> <p>7 in the process of selling insurance because of the elements</p> <p>8 of the process of selling insurance.</p> <p>9 So you take -- you take what the defendants have</p> <p>10 acknowledged as why they were using it, what they were</p> <p>11 trying to achieve, and you apply it to the process of</p> <p>12 selling insurance and why it matters in the process of</p> <p>13 selling insurance. And you reach a conclusion that it had</p> <p>14 an impact. It was significant.</p> <p>15 He's not quantifying it in terms of -- he's not</p> <p>16 touching it to revenue. That was a different expert. He's</p> <p>17 just saying, how does this matter to the process of selling</p> <p>18 insurance, from the defendants' own experience.</p> <p>19 THE COURT: Understood. I understand your</p> <p>20 objection. I'm going to allow him to testify. You can</p> <p>21 bring this all out in cross. You can make objections during</p> <p>22 his testimony, if you wish. But I'll hear the testimony or</p> <p>23 we'll begin with the testimony, and we'll cross that bridge</p> <p>24 here when we get to it.</p> <p>25 MS. GODESKY: Your Honor, just for the record,</p>	<p style="text-align: right;">1380</p> <p>1 So let's bring the jury in.</p> <p>2 <b>IN OPEN COURT</b></p> <p>3 THE COURT: Go ahead and be seated.</p> <p>4 Mr. Whitener, come on back up to the witness</p> <p>5 stand, if you would.</p> <p>6 THE WITNESS: Mic is on?</p> <p>7 MR. HINDERAKER: Yep. Sounds good. We can hear</p> <p>8 you.</p> <p>9 BY MR. HINDERAKER:</p> <p>10 <b>Q.</b> Let's turn to -- let's turn to a discussion of the</p> <p>11 different kinds of insurance products in the marketplace so</p> <p>12 we start to get that understanding.</p> <p>13 If we could go to slide 7, please.</p> <p>14 This slide obviously shows four different kinds of</p> <p>15 insurance. And is that -- that's accurate? We can put --</p> <p>16 we can put insurance products into these four categories?</p> <p>17 <b>A.</b> You can. I generally refer to these as market segments.</p> <p>18 <b>Q.</b> Market segments. All right.</p> <p>19 Well, I'd like to just go through each one so we</p> <p>20 have an understanding of the marketplace with respect to</p> <p>21 insurance products. So if -- I think I can control this for</p> <p>22 a moment.</p> <p>23 Let's go to specialty insurance. Tell us what it</p> <p>24 is, please.</p> <p>25 <b>A.</b> Specialty insurance is a type of commercial insurance</p>
<p style="text-align: right;">1379</p> <p>1 I'll lodge the additional objection that this is</p> <p>2 particularly prejudicial given his lack of qualifications</p> <p>3 and the fact that this all goes to the disgorgement question</p> <p>4 that's going to be decided by the Court, not the jury.</p> <p>5 And now they're hearing testimony from someone who</p> <p>6 is, I think admittedly by plaintiffs, not qualified to</p> <p>7 testify about Blaze Advisor.</p> <p>8 With that, is he presented as qualified in</p> <p>9 insurance? Is that the qualification that the Court is</p> <p>10 presenting? I'm just trying to understand if he's allowed</p> <p>11 to testify, what is the qualification?</p> <p>12 THE COURT: He's testified as to the width and</p> <p>13 breadth of his experience and expertise in the insurance</p> <p>14 industry and his knowledge of the use of technology in</p> <p>15 underwriting, generally speaking. Beyond that, he has Blaze</p> <p>16 specific knowledge derived from the documents.</p> <p>17 So on that basis and not knowing exactly what's</p> <p>18 coming out of the witness' mouth, I'm going to let him</p> <p>19 testify. And I understand your concern, but let me be</p> <p>20 blunt. All of this is things that would have been</p> <p>21 beneficially raised on <i>Daubert</i> motions, and if not at</p> <p>22 <i>Daubert</i> motions, then raised in motions in limine, and we</p> <p>23 could have addressed it then.</p> <p>24 And I didn't use the word "waiver." I didn't say</p> <p>25 you'd waived it.</p>	<p style="text-align: right;">1381</p> <p>1 generally segmented out from an organizational standpoint</p> <p>2 inside of the underwriting functions of a company, the</p> <p>3 corporate underwriting functions, even front line</p> <p>4 underwriting functions.</p> <p>5 Specialty insurance is insurance for unique risk,</p> <p>6 and I'll use the phrase "as opposed to mainstream</p> <p>7 commercial." Commercial insurance, relatively less complex.</p> <p>8 Special insurance, very complex. A good example of this</p> <p>9 might be directors and officers insurance. This usually</p> <p>10 revolves around various types of professional liability or</p> <p>11 unique risk.</p> <p>12 There was a time in the past where the Bengal</p> <p>13 tiger, the white Bengal tiger at the Cincinnati Zoo was</p> <p>14 loaned, I believe, to the San Diego Zoo and the specialty</p> <p>15 marketplace of the general insurance property casualty</p> <p>16 industry provided that coverage.</p> <p>17 A good example would be medical malpractice.</p> <p>18 Another good example is architects and engineers, people</p> <p>19 that require liability protection because of -- because of</p> <p>20 mistakes.</p> <p>21 <b>Q.</b> In general, does specialty insurance require a higher</p> <p>22 level of underwriting expertise?</p> <p>23 <b>A.</b> Yes.</p> <p>24 <b>Q.</b> And explain why, please.</p> <p>25 <b>A.</b> The risk -- the risks are significantly higher. The</p>



<p style="text-align: right;">1386</p> <p>1 to sell that insurance by the state, the state of Virginia,  2 the state of Massachusetts, the State of Minnesota.  3 So the independent agent, if they decide that they  4 desire to make their career by having an insurance-selling  5 business, they go to the State, and they take tests, and  6 they acquire a license to sell. Then they go out and they  7 establish relationships with insurance companies.  8 When I entered into the industry in the late  9 1970s, it wasn't unusual for an independent agent to have  10 10, 12 companies in its arsenal of people for which it had a  11 license to sell insurance. Nowadays, that number is  12 probably a little closer to five because the agents started  13 to realize it costs money to have the insurance license for  14 that company.  15 But the reality is, the real bottom line here is  16 the independent agents are independent businesses. They run  17 their own business. They're licensed by the state. They  18 acquire that themselves. And then they go out, and they  19 market themselves to the insurance companies.  20 Insurance companies say, yes, we want to do  21 business with you, and they have a contractual agreement  22 that allows the independent agent to sell on behalf of the  23 company.  24 <b>Q.</b> But the independent agent doesn't have to only sell on  25 behalf of one company. He can sell on behalf of as many</p>	<p style="text-align: right;">1388</p> <p>1 of policies, so let's go back to the flower shop. Okay? I  2 want to write flower shops. Okay?  3 Hey, front line underwriting, we want to write  4 flower shops, but we don't want you to write flower shops  5 that have five delivery vehicles. We want the small guys.  6 We want somebody that only has one or two vehicles.  7 All of that has to take place in the underwriting  8 process. Sometimes executed systemically and sometimes  9 executed by humans.  10 <b>Q.</b> Okay. And "systemically," did you mean by technology?  11 <b>A.</b> Yes. Yes.  12 <b>Q.</b> And I think that -- I go slow on the natural, but I  13 think you have to go slow on the unnatural. Slow down a  14 little bit.  15 <b>A.</b> I'll do my best, sir.  16 <b>Q.</b> All right.  17 <b>A.</b> As Mr. Pandey pointed out, he loves technology. I might  18 be guilty of the same thing as it respects property casualty  19 insurance.  20 <b>Q.</b> All right. Is it fair to say that the underwriter is  21 the key person in this process of selling insurance?  22 <b>A.</b> It is fair to say that the underwriter is the key -- the  23 front line underwriter is the key person in this.  24 <b>Q.</b> Okay. So that's the -- that's having the steps of  25 selling in mind. I want to go to a different topic being</p>
<p style="text-align: right;">1387</p> <p>1 companies as he has agreements with?  2 <b>A.</b> Correct. As I mentioned, and nowadays it looks to be  3 about five.  4 <b>Q.</b> Okay.  5 <b>A.</b> And that creates an interesting dynamic in the  6 relationship because all of the insurance companies know  7 that the independent agent has a portfolio of companies  8 available, and so there's a -- there is a goal in that front  9 line underwriting function to establish for the agents you  10 select almost a loyalty, if you will, a preference for doing  11 business with each other.  12 <b>Q.</b> And then let's turn to the third, say, person involved  13 in the process of selling insurance, the underwriter of the  14 insurance company. I think at this point we're talking  15 about front line underwriting?  16 <b>A.</b> We are.  17 <b>Q.</b> And so what is the role, if you will, of the -- well,  18 let me ask you this: Is it possible to sell insurance  19 without front line underwriting?  20 <b>A.</b> No.  21 <b>Q.</b> Not whether you use technology or not, but you have to  22 underwrite to sell insurance?  23 <b>A.</b> Yes, because the definition of underwriting is within  24 the -- it's where the risk appetite and the type of policies  25 the company wants to write, and then inside of those types</p>	<p style="text-align: right;">1389</p> <p>1 what we've heard defined, I guess, as a policy  2 administration system. Turn to that subject.  3 With or without technology, can insurance  4 companies sell insurance without a policy administration  5 system?  6 <b>A.</b> In today's current environment, it could be done, but  7 you can't be price-competitive because the expenses it would  8 cost to do that would drive your price way above the point  9 where you could sell in the marketplace.  10 <b>Q.</b> Okay. Fair to say regardless of what the particular  11 technology is, technology is used in the policy  12 administration system's process?  13 <b>A.</b> I would say that differently. Policy -- policy  14 administration system is a technology or a collection of  15 technologies used to administer the selling of insurance  16 process in the underwriting process.  17 <b>Q.</b> Thank you. I'm sorry to talk over you.  18 And that was your experience -- and that was true  19 in your experience in the industry?  20 <b>A.</b> Yes, across all 44 years.  21 <b>Q.</b> So let's go to the steps in the process of selling and  22 underwriting, just to walk us through the application. We  23 don't have to spend any more time than necessary, but let's  24 spend, as you might say, all the time that is necessary.  25 Describe for us the application step in the</p>

<p style="text-align: right;">1390</p> <p>1 selling process.</p> <p>2 <b>A.</b> As I start this, and I will talk slowly and do this as</p> <p>3 fast as I can.</p> <p>4 The Court has heard the word "application" several</p> <p>5 times, and that's one of the aspects of property casualty</p> <p>6 insurance. Words can have multiple meanings. So we've</p> <p>7 heard applications referred to as CIS is an application.</p> <p>8 This use of the word "application" is talking</p> <p>9 about the collection of data from the applicant, the</p> <p>10 person -- or the entity, the business requesting insurance,</p> <p>11 the person requesting insurance.</p> <p>12 They provide that information to the independent</p> <p>13 agents or broker to be able -- for the independent agent and</p> <p>14 broker to be able to submit it into the -- into the</p> <p>15 underwriting process. So the first step of every policy</p> <p>16 that is a prospect to be issued is, collect the data and it</p> <p>17 starts with the application.</p> <p>18 <b>Q.</b> Okay. Let's go to step number two then.</p> <p>19 <b>A.</b> When that application comes into the underwriting</p> <p>20 process, the first thing the underwriter or the underwriting</p> <p>21 process is going to do is, it's going to ask itself a</p> <p>22 question, and that question is, Is this data adequate and</p> <p>23 accurate for the risk assessment?</p> <p>24 And most frequently the answer is yes, but the</p> <p>25 answer can be no. And of course, if the answer is no, the</p>	<p style="text-align: right;">1392</p> <p>1 is a possibility that the application does not represent a</p> <p>2 request for insurance that fits into that company appetite.</p> <p>3 If the risk doesn't fit the company appetite, the</p> <p>4 underwriter is going to say no, and then the independent</p> <p>5 agent, broker and the applicant are going to begin to search</p> <p>6 for insurance through other insurance company alternatives.</p> <p>7 If the -- can we now go back to yes? Are you</p> <p>8 ready?</p> <p>9 If we go back to yes, the underwriter then is</p> <p>10 going -- going to craft the proposal. It's called a quote.</p> <p>11 It's an offer for insurance. And the underwriter is going</p> <p>12 to take a next step to make sure that that quote is in</p> <p>13 compliance.</p> <p>14 <b>Q.</b> So let's take those two things separately, please.</p> <p>15 At the stage of the underwriter assessing the</p> <p>16 adequacy and accuracy of the information and fashioning a</p> <p>17 quote, what is the value of being able to be precise? What</p> <p>18 is the value of precision at that step?</p> <p>19 <b>A.</b> There are two -- there are two impacts to precision.</p> <p>20 Okay? The first impact is if it is acceptability to the</p> <p>21 applicant. If your price is too high, a competitor may be</p> <p>22 able to grab that policy instead of you. Okay?</p> <p>23 If the price is too low, you'll grab the policy.</p> <p>24 You'll write the policy, but when you collect number of</p> <p>25 those policies and the losses start to come in, you do not</p>
<p style="text-align: right;">1391</p> <p>1 next question is, well, what data do I need and from whence</p> <p>2 am I going to get it?</p> <p>3 Once the underwriting has, my terminology, that</p> <p>4 adequate amount of information and has confidence in its</p> <p>5 accuracy, the underwriter will then go through a risk</p> <p>6 assessment process, and that risk assessment process will</p> <p>7 ultimately result in a here are the -- well, it's going to</p> <p>8 result in a yes or a no first.</p> <p>9 Let's take yes first. Okay? If it results in a</p> <p>10 yes, it's going to be, what coverages am I willing to offer</p> <p>11 this applicant? And that's coverage grants, coverage</p> <p>12 restrictions. And then what price are we going to offer?</p> <p>13 Okay. And the key to price is, the insurance</p> <p>14 company wants a price that reflects the probability of loss,</p> <p>15 the probability of future claims, not one-on-one with</p> <p>16 policies. But in the collection of homogenous risk, similar</p> <p>17 types of risk, they want to know that in population when</p> <p>18 they collect the premium, they've got enough money to cover</p> <p>19 the losses because not everybody is going to have a loss.</p> <p>20 <b>Q.</b> Okay.</p> <p>21 <b>A.</b> Now, the next part of that process -- so we're at yes.</p> <p>22 There is a possibility that it's no. The risk may fall</p> <p>23 outside of the -- I'm sorry. Where are we?</p> <p>24 <b>Q.</b> The risk may fall outside of --</p> <p>25 <b>A.</b> It's possible. So now I'm switching over to no. There</p>	<p style="text-align: right;">1393</p> <p>1 have adequate enough premium to cover the losses plus your</p> <p>2 expenses and produce a profit.</p> <p>3 So the precision of the price is critical to the</p> <p>4 long-term success of the profitability for that product</p> <p>5 type.</p> <p>6 <b>Q.</b> And we are in the scenario where the underwriter has</p> <p>7 chosen to say yes, and that results in a quote, as you say,</p> <p>8 on the --</p> <p>9 <b>A.</b> Quote is insurance terminology for an offer to insure.</p> <p>10 We would -- flower shop, we would like to insure you.</p> <p>11 Here's what we can do for you. Here's the coverages, the</p> <p>12 limits of liability, the property, the property amount of</p> <p>13 coverage. Here are any restrictions that we place on the</p> <p>14 policy. Here's the deductible, for instance, and here's the</p> <p>15 price.</p> <p>16 <b>Q.</b> Does the -- does speed, does the ability to respond to</p> <p>17 the applicant faster rather than slower affect -- have an</p> <p>18 impact on the sales process?</p> <p>19 <b>A.</b> Yes.</p> <p>20 <b>Q.</b> What is that?</p> <p>21 <b>A.</b> The faster you get information about the offer, whether</p> <p>22 the offer is coming or not, the more -- if the offer is</p> <p>23 coming, the more likely it is you will convert that quote</p> <p>24 into a policy. And part of that is, as you and I discussed</p> <p>25 earlier, it's the insurance agent doesn't have an incentive</p>

<p style="text-align: right;">1394</p> <p>1 to shop it.</p> <p>2 If the applicant is sitting there waiting,</p> <p>3 waiting, waiting, the agent may shop it out to one of those</p> <p>4 other companies in the portfolio to see if the agent can get</p> <p>5 an answer from them quicker. Speed is important.</p> <p>6 <b>Q.</b> Then the next step is compliance. What is that?</p> <p>7 <b>A.</b> Well, there are two aspects to compliance. Right? So</p> <p>8 the product that you're selling has to fit inside of the</p> <p>9 definition of the product approved by the State, so that's</p> <p>10 compliance number one.</p> <p>11 But the company, when it created that appetite for</p> <p>12 risk in the definition of the products that they wanted to</p> <p>13 write, they created something called a series of</p> <p>14 underwriting guidelines. And one of the most talked about</p> <p>15 underwriting guidelines in the arena that most of us</p> <p>16 understand is years and years and years ago, insurance</p> <p>17 companies didn't like to insure red cars.</p> <p>18 That's not true today, but that's the type of</p> <p>19 thing that is considered there. Am I, the individual</p> <p>20 underwriter, the front line underwriter, in compliance with</p> <p>21 the requirements of the corporate underwriting, and is this</p> <p>22 policy in compliance with the regulation of the State?</p> <p>23 <b>Q.</b> And of course no insurance company wants to sell an</p> <p>24 insurance policy that's out of compliance?</p> <p>25 <b>A.</b> I have never worked for an insurance company that did</p>	<p style="text-align: right;">1396</p> <p>1 call bind book issue.</p> <p>2 <b>Q.</b> Before we get to that, the question I had in mind was,</p> <p>3 in this -- in this space that we're talking about, either</p> <p>4 the specialty insurance market or the commercial insurance</p> <p>5 market, it's typical, common, that there will be this</p> <p>6 dynamic or this negotiation, if you will, between agent and</p> <p>7 broker and underwriter. Is that fair?</p> <p>8 <b>A.</b> Everybody accepts that that's the reality, and it</p> <p>9 happens. I won't say it happens a hundred percent of the</p> <p>10 time. I also won't say it happens zero percent of the time,</p> <p>11 but it happens.</p> <p>12 <b>Q.</b> And is this a stage in the process where the</p> <p>13 relationship that the underwriter may have with the agent</p> <p>14 and broker matters?</p> <p>15 <b>A.</b> Not only does it matter, it helps. So if the</p> <p>16 relationship is good, this is going to go great. If the</p> <p>17 relationship is poor, it's probably not going to go great.</p> <p>18 <b>Q.</b> Is part of that relationship whether the company itself</p> <p>19 is easy to do business with?</p> <p>20 <b>A.</b> Yes.</p> <p>21 <b>Q.</b> Can you describe that for us, please?</p> <p>22 <b>A.</b> Certainly. Independent agents and brokers, they're</p> <p>23 independent people, business people, and they want things to</p> <p>24 happen with as little effort on their part. They want</p> <p>25 things to happen as quickly as possible.</p>
<p style="text-align: right;">1395</p> <p>1 not have a "stay out of jail" rule.</p> <p>2 <b>Q.</b> And then step number five, after underwriter has</p> <p>3 fashioned his proposal, his quote, knows that the quote is</p> <p>4 in compliance, the quote is sent to the agent and broker.</p> <p>5 <b>A.</b> Yes, that's the next step.</p> <p>6 <b>Q.</b> Okay. Now, at that step, can you describe for us the</p> <p>7 dynamics, if there are any, between the underwriter and the</p> <p>8 agent and broker as the -- at that step number five?</p> <p>9 <b>A.</b> Certainly. The agent and broker is going to look at</p> <p>10 this quote offer, and the agent and broker is going to talk</p> <p>11 with the applicant about it. It may be perfectly acceptable</p> <p>12 to the applicant, or the applicant may say, you know, I'd</p> <p>13 like to tweak this a little bit.</p> <p>14 So in this process right here, there is</p> <p>15 negotiation between the underwriter and the independent</p> <p>16 agent, with the independent agent representing the</p> <p>17 applicant. And changes do get made to quote offers. It</p> <p>18 gets tweaked. That happens.</p> <p>19 But ultimately, at the end of that process, the</p> <p>20 applicant is either going to accept or reject the quote</p> <p>21 offer. If the applicant rejects it, the independent agent</p> <p>22 is going to go into the process of, okay, who else is in my</p> <p>23 portfolio of companies that I can have a discussion about</p> <p>24 this policy with?</p> <p>25 If the offer is accepted, you now move into what I</p>	<p style="text-align: right;">1397</p> <p>1 And so inside of this, I want things to happen</p> <p>2 quickly, and inside of this whole process of selling</p> <p>3 underwriting insurance, they want companies that are easy to</p> <p>4 do business with.</p> <p>5 So I've seen situations where agents deemed a</p> <p>6 company easier to do business with because it required less</p> <p>7 underwriting information, but what the company was doing</p> <p>8 was, it was purchasing from a third-party information vendor</p> <p>9 information on the back end so that the agent wasn't forced</p> <p>10 to get it.</p> <p>11 <b>Q.</b> And as a consequence, thought it was going to be selling</p> <p>12 more insurance?</p> <p>13 <b>A.</b> Yes.</p> <p>14 <b>Q.</b> So we've gone through the dynamics of the agent, broker</p> <p>15 and underwriter. Applicant accepts. What's the next step</p> <p>16 in the process?</p> <p>17 <b>A.</b> When -- so because the underwriter has made an offer, if</p> <p>18 it is accepted, it now enters into a legal status of bound.</p> <p>19 <b>Q.</b> So tell us what that means, not legally but insurance</p> <p>20 language.</p> <p>21 <b>A.</b> Coverage exists.</p> <p>22 <b>Q.</b> Coverage exists?</p> <p>23 <b>A.</b> Coverage exists. Bound -- bound means the insurance</p> <p>24 company now, based on the effective date of the quote, will</p> <p>25 be in effect on that effective date. No policy has been</p>

<p style="text-align: right;">1398</p> <p>1 issued. There is no paper. There is no dec page. But</p> <p>2 coverage exists. That's the binding process.</p> <p>3 <b>Q.</b> So when I trade in my car to the dealer and have a</p> <p>4 different car but I want to be insured on my ride home, I</p> <p>5 call my agent, give him the information. The agent says,</p> <p>6 okay, you're bound, you have insurance?</p> <p>7 <b>A.</b> That's a good understanding.</p> <p>8 <b>Q.</b> And then separate from bound is another step, policy is</p> <p>9 booked and issued. What does that mean?</p> <p>10 <b>A.</b> These are two processes that take place simultaneously.</p> <p>11 So the policy is bound. The underwriter has the</p> <p>12 communication. The applicant has accepted the policy.</p> <p>13 Well, now -- this is an oversimplification. A</p> <p>14 button has to be pushed which says issue the policy. Right?</p> <p>15 The underwriter pushes that button, and now what insurance</p> <p>16 technology people would call interfaces, interfaces start</p> <p>17 the process.</p> <p>18 One of the processes is an interface communication</p> <p>19 out to whatever I call this fulfillment, but who is going to</p> <p>20 print the dec page. Right? Who's going to stuff it into an</p> <p>21 envelope. Today that's a little bit of a misnomer because</p> <p>22 many people receive their issued policy documents</p> <p>23 electronically.</p> <p>24 But it has to be issued, and a copy, electronic or</p> <p>25 paper, of the policy and everything that comprises the</p>	<p style="text-align: right;">1400</p> <p>1 but fairly radical example would be that flower shop that</p> <p>2 all of a sudden starts selling fireworks, the underwriter</p> <p>3 would want to know that.</p> <p>4 <b>Q.</b> How would the insurance company know that the flower</p> <p>5 shop has changed business to fireworks?</p> <p>6 <b>A.</b> Well, the independent agent will -- the policyholder,</p> <p>7 the named insured, would communicate to the independent</p> <p>8 agent, hey, I've got a new business now. I've got different</p> <p>9 inventory. I need to change the coverages.</p> <p>10 The independent agent would communicate to the</p> <p>11 underwriters, and red flags would flip up.</p> <p>12 <b>Q.</b> Okay. And again, it's technology -- in this day and</p> <p>13 age, it's technology that does that.</p> <p>14 <b>A.</b> For the most part, yes.</p> <p>15 <b>Q.</b> Yes. And then policy renewal. Maybe it's</p> <p>16 self-explanatory, but in the whole process, would you</p> <p>17 describe that, please?</p> <p>18 <b>A.</b> Certainly. The preponderance, but not all, of policies</p> <p>19 today carry an annual policy term. So when you have a quote</p> <p>20 that is converted to a policy, it's considered a new</p> <p>21 business policy. That's how the insurance industry</p> <p>22 categorizes it.</p> <p>23 Once that policy begins to approach the expiration</p> <p>24 date of the policy, and if my memory is correct,</p> <p>25 Mr. Pandey's description of this renewal process was a</p>
<p style="text-align: right;">1399</p> <p>1 policy has to go to the interested parties. So the now</p> <p>2 named insured is going to receive a copy of the policy. You</p> <p>3 move from applicant to named insured.</p> <p>4 The agent, the independent agent, is going to</p> <p>5 receive a copy. If there is a financial institution</p> <p>6 involved, so if you think about that flower shop and that</p> <p>7 flower shop actually owns the physical property, they're not</p> <p>8 renting, there's probably a mortgage, a financial loan on</p> <p>9 that. And the mortgage company is going to want to be named</p> <p>10 on the policy, and they're going to want to get a copy of</p> <p>11 the policy.</p> <p>12 That's the issued process. Dec page, policy</p> <p>13 language, statutory endorsements.</p> <p>14 <b>Q.</b> And in your experience, technology is used inside of a</p> <p>15 policy administration system to assist in that part of the</p> <p>16 process as well?</p> <p>17 <b>A.</b> Yes. The policy administration system is the technology</p> <p>18 that is driving all of these processes.</p> <p>19 <b>Q.</b> Policy monitoring, what is that?</p> <p>20 <b>A.</b> Once a policy comes into existence, it is a concern of</p> <p>21 the front line underwriter if significant, meaningful,</p> <p>22 changes take place to the policy in the -- in the middle of</p> <p>23 the term.</p> <p>24 So they have usually systems checks, rules in</p> <p>25 place that say, hey, if X or Y or Z, an easily understood</p>	<p style="text-align: right;">1401</p> <p>1 90-day ahead of time window, different products, different</p> <p>2 companies have a different window. It might be 95. It</p> <p>3 might be 82. But a window exists.</p> <p>4 That window is going to kick off, and the</p> <p>5 evaluation of whether the insurance company wants to offer a</p> <p>6 renewal will take place. And if they decide the answer to</p> <p>7 that is yes, they will send out a renewal offer.</p> <p>8 Now, the renewal offer will look a whole lot like</p> <p>9 a policy, a new policy with a second policy term, but the</p> <p>10 reality is, it doesn't become a policy unless it is</p> <p>11 accepted, and the acceptance is generally deemed to be the</p> <p>12 receipt of premium.</p> <p>13 <b>Q.</b> Okay. And in the -- and in your experience in the</p> <p>14 industry, how valuable -- how valuable to the insurance</p> <p>15 company is its ability to convert existing policies into</p> <p>16 renewal policies, or maybe I could say another way: How</p> <p>17 valuable is the overall percentage of renewals to an</p> <p>18 insurance company?</p> <p>19 <b>A.</b> Renewals are incredibly important to an insurance</p> <p>20 company, and you'll see the phrase "renewal retention,"</p> <p>21 because there's just not enough opportunity in the market of</p> <p>22 people looking for a new insurance policy to accomplish the</p> <p>23 written premium objectives that companies have if they don't</p> <p>24 hold on to or if they're not good at holding on to their</p> <p>25 renewals.</p>

<p style="text-align: right;">1402</p> <p>1 <b>Q.</b> And then I take it that there's some aspects of the</p> <p>2 underwriting process that repeats itself at the renewal</p> <p>3 stage?</p> <p>4 <b>A.</b> Yes. The process that you have in front of you, the</p> <p>5 real difference is, the application part of this is really</p> <p>6 different because there's not an application to be filled</p> <p>7 out because the insurance company has the preponderance of</p> <p>8 that information.</p> <p>9 <b>Q.</b> And that information is stored in its technology</p> <p>10 systems?</p> <p>11 <b>A.</b> Yes, in its databases and other things.</p> <p>12 <b>Q.</b> So we went through the process. I want to go back just</p> <p>13 for a moment to that step in the process which is the front</p> <p>14 line underwriting because of its central role. And some of</p> <p>15 this you've described, so -- in terms of the -- the</p> <p>16 information needed to start the process and make sure that</p> <p>17 all of the information is collected.</p> <p>18 What is the dynamic, if I can put it that way, of</p> <p>19 the underwriter's interface with the rules of decision for</p> <p>20 underwriting and the information that the applicant has</p> <p>21 provided? Does that make sense?</p> <p>22 <b>A.</b> So I believe you're asking me how does the underwriter</p> <p>23 go about making the decision of whether to insure or not to</p> <p>24 insure. Is that what you're asking me?</p> <p>25 <b>Q.</b> I guess that's right.</p>	<p style="text-align: right;">1404</p> <p>1 what we can do.</p> <p>2 <b>Q.</b> And the underwriter isn't making these decisions in a</p> <p>3 vacuum?</p> <p>4 <b>A.</b> Absolutely not.</p> <p>5 <b>Q.</b> Fair to say that the underwriter is making these</p> <p>6 decisions by applying or executing against the rules of</p> <p>7 decision of the company that speak to that particular kind</p> <p>8 of policy and that particular risk?</p> <p>9 <b>A.</b> When I speak to underwriting guidelines, the</p> <p>10 underwriting guidelines are the set of rules for that state</p> <p>11 product that the front line underwriting function is going</p> <p>12 to be responsible for compliance with those rules.</p> <p>13 <b>Q.</b> Okay. Now, you've had experience with -- let me put it</p> <p>14 this way: In your experience, do human underwriters, being</p> <p>15 human, some are better. Some are worse than others?</p> <p>16 <b>A.</b> That's consistent across the industry.</p> <p>17 <b>Q.</b> Sure. And as human beings, underwriters may or may not</p> <p>18 impose some subjectivity or their own ideas into the process</p> <p>19 of decisioning?</p> <p>20 <b>A.</b> That's true. When I sat in the corporate underwriting</p> <p>21 function at the Hartford, three or four times I got pulled</p> <p>22 to be on an underwriting audit team and go out to -- go out</p> <p>23 to a field office and do an audit. And invariably in every</p> <p>24 audit, we identified people whose compliance with those</p> <p>25 underwriting guidelines, those underwriting rules, was not</p>
<p style="text-align: right;">1403</p> <p>1 <b>A.</b> Okay. Let's try it this way: Corporate underwriting,</p> <p>2 definition of underwriting guidelines for the product, the</p> <p>3 underwriter is going to make sure that they have the</p> <p>4 information they need. They're going to make sure that they</p> <p>5 have a price that matches to the risk that that information</p> <p>6 puts out. When they do that, they're going to consider a</p> <p>7 bunch of things.</p> <p>8 So in commercial insurance -- and I wrote down a</p> <p>9 few of these. These are not all, but it's the type of</p> <p>10 business. An insurance company is going to look differently</p> <p>11 at an architect and engineer's firm that has been going it</p> <p>12 for 20 years versus one that's one year old.</p> <p>13 An insurance company is going to look differently</p> <p>14 at a flower shop, as opposed to a fire works manufacturer.</p> <p>15 So you look at the type of business. You look at the</p> <p>16 ownership of the business. You look at how long the</p> <p>17 business has been in business. You look at how long the</p> <p>18 management of the business has been in place.</p> <p>19 And in most of these that I've just articulated,</p> <p>20 you know, longer is better. The more experienced you are,</p> <p>21 the better you are at the business and the better you are at</p> <p>22 mitigating risk or avoiding risk.</p> <p>23 So the underwriter goes through that process. And</p> <p>24 at the end, that gets you back on the chart to the quote</p> <p>25 offer. Okay. I like this risk. I like this price. Here's</p>	<p style="text-align: right;">1405</p> <p>1 as good as some of the other people in the office.</p> <p>2 That's the nature of humans. I'm sorry.</p> <p>3 <b>Q.</b> Of course. Is it your experience that if technology is</p> <p>4 deployed that you can place the underwriting guidelines and</p> <p>5 rules of decision into the technology so that you use the</p> <p>6 expertise of the top expert of the organization?</p> <p>7 <b>A.</b> Yes. And I'll put one caveat in it. Right? The system</p> <p>8 could come back and say this: If the system is built with</p> <p>9 an override function, the human could be tempted to use the</p> <p>10 override function. But the beauty of technology there is,</p> <p>11 it will know. You will be alerted immediately if someone</p> <p>12 has breached the rules because they overrode the rules.</p> <p>13 <b>Q.</b> Okay. So maybe you have a higher quality of rules being</p> <p>14 executed because you placed a higher quality of rules into</p> <p>15 the technology?</p> <p>16 <b>A.</b> I would say that differently. I would say the rules --</p> <p>17 the rules -- you have a higher quality of the execution of</p> <p>18 the rules consistently.</p> <p>19 <b>Q.</b> And the consistency comes from the fact that the rules</p> <p>20 are being applied and executed by technology by a computer?</p> <p>21 <b>A.</b> Yes.</p> <p>22 <b>Q.</b> Does the same thing every time against the same data.</p> <p>23 <b>A.</b> Yes.</p> <p>24 <b>Q.</b> If there are going to be any special limits placed upon</p> <p>25 the scope of the coverage in this renewal or quoting process</p>



**1442****1444**

1 you're still under oath. I don't have to swear you again.  
 2 Do slow down a bit. Okay? The court reporter  
 3 has to take down what you say, and you will hear from her  
 4 if you're too fast.  
 5 THE WITNESS: Always delighted to hear from her.  
 6 I'm pouring water. There is a blessing and a curse to be  
 7 southern. We talk fast.  
 8 (Witness previously sworn.)  
 9 (RANDOLPH BICKLEY WHITENER)  
 10 DIRECT EXAMINATION (RESUMED)  
 11 BY MR. HINDERAKER:  
 12 Q. Good morning.  
 13 A. Good morning.  
 14 Q. In a few minutes, a couple minutes, I'm going to start  
 15 off where we left off, but I want to do this beforehand.  
 16 Mr. Mayleben, would you bring up the RFI, please?  
 17 And in your binder, if it's going to be better  
 18 for you, this is the J002 document.  
 19 A. I'm there.  
 20 Q. Okay. And on the screen is going to be -- there we go.  
 21 I would like to bring your attention to page 6.  
 22 A. I'm there.  
 23 Q. And then I would like to bring your attention to that  
 24 section which is titled "Current CSI IT Environment."  
 25 A. Yes.

1 process. It's a quote, it's a bind, it's a book, it's an  
 2 issue. And I also point out that those words have been  
 3 used by other defendants.  
 4 Q. Understood. In this exhibit under the next paragraph  
 5 where it says "Additionally," it's describing that the  
 6 interface -- about midway in that paragraph on  
 7 "Additionally," the interface between CSI Express and the  
 8 rating application is based loosely on a repository design  
 9 style with the Infomix-based UWS database as a central  
 10 repository. And it concludes, the rating application uses  
 11 the Duck Creek rating engine to provide screen definition  
 12 and black box rating calculation."  
 13 Do you see where I read?  
 14 A. I do.  
 15 Q. In reviewing all the documents, is it accurate that  
 16 Blaze Advisor was used in the underwriting silo, and then  
 17 it accessed a different silo called "Ratings," which  
 18 included, at least in some applications, the use of Duck  
 19 Creek?  
 20 A. Yes.  
 21 Q. Thank you. And so now let's go and return to where we  
 22 were before. We were looking at -- we started off with --  
 23 well, let's pick up where we left off, and let's go to  
 24 slide 28, if we could.  
 25 And just as a quick review, this is a document of

**1443****1445**

1 Q. And go down to that, please. And then first if we can  
 2 show the table, the graph. That's good.  
 3 And so you see that in the RFI, Chubb & Son is  
 4 telling FICO that in the business tier, there already is,  
 5 in their environment, Duck Creek?  
 6 A. Yes, I see.  
 7 Q. Okay. And then that's explained in the RFI, if we go  
 8 to the writing underneath that. "From an architectural  
 9 perspective the CSI environment can be broken out into four  
 10 distinct silos: Underwriting, rating, claims and  
 11 reporting."  
 12 In your analysis of all of the documents in this  
 13 case that you have reviewed, was Blaze Advisor -- which  
 14 silo was Blaze Advisor used in in the architecture of the  
 15 defendant?  
 16 A. Blaze Advisor was used in the business tier. I am not  
 17 completely certain what the underwriting worksheet is, so I  
 18 won't speak to that. The only deployment of Blaze Advisor  
 19 from the claims perspective was not in the claims services.  
 20 It was in providing support to actuarial -- to the  
 21 actuarial sciences group.  
 22 Q. Yes.  
 23 A. And then the underwriting services, it was deployed  
 24 here because you see the words, "Renewal," and I take you  
 25 back to my definition of this selling the insurance

1 the defendants', internal communication to themselves,  
 2 different parts of it, the people, called Business Rules.  
 3 And on this page of that document, it's a reporting inside  
 4 the company, inside the division -- inside Chubb & Son, the  
 5 division, uses within the P&C industry. Do you see?  
 6 A. Yes.  
 7 Q. Okay. And in terms of companies, it's reporting on the  
 8 use of business rules within -- by different insurance  
 9 companies?  
 10 A. Yes.  
 11 Q. And just to be clear, in each of the -- like in the  
 12 results for AIG, it specifically references Blaze Advisor,  
 13 right?  
 14 A. It does.  
 15 Q. And then in the solution description for Kemper Auto,  
 16 it specifically addresses Blaze Advisor?  
 17 A. It does.  
 18 Q. And then for the Hartford Insurance Group, it  
 19 specifically addresses Blaze Advisor in the solution  
 20 descriptions column?  
 21 A. I agree.  
 22 Q. Okay. And in your view -- in your review of all of the  
 23 materials, what was the significance of this to you?  
 24 A. The significance of this document to me was the fact  
 25 that in internal communications within Chubb, they



**1446****1448**

1 highlighted the fact that other companies had done some  
 2 quantification of benefits, and they stated those. So I  
 3 viewed this as a marketing department -- I'm sorry, not a  
 4 marketing department -- a marketing effort by presenter to  
 5 say, hey, you know, look, other people are seeing some  
 6 stuff from this. Maybe -- maybe we've got to take  
 7 advantage of it.  
 8 Q. This is inside the IT group at Chubb & Son?  
 9 A. Yes, the communication.  
 10 Q. Right. So that, for example, they are reporting to  
 11 themselves that AIG country-specific risk models, rating  
 12 criteria, Blaze Advisor can be developed in shorter time  
 13 periods, 5 to 14 days, versus several months. They  
 14 reported predictive modeling for Kemper Auto and Home,  
 15 eight-point reduction combined ratio after first year.  
 16 A. It does say that, yep.  
 17 Q. And that's insurance ease, insurance language. What  
 18 is -- what is a combined ratio?  
 19 A. In the insurance industry, we tend to manage and  
 20 measure on a ratio basis, so a combined ratio is a ratio of  
 21 written premium and earned premium versus the percentage of  
 22 various expense components of the profit and loss  
 23 statement.  
 24 So if you have a combined ratio that is exactly  
 25 100.0, you have broken even on your underwriting process.

1 eight points, now you have an underwriting profit of a  
 2 combine ratio of 82?  
 3 A. I agree with that, and that is a correct statement.  
 4 Q. So the reduction is a beneficial positive direction?  
 5 A. Yes.  
 6 Q. Okay. And then the Hartford Insurance Group,  
 7 straight-through processing was the objective. "The result  
 8 drastically reduced error collection cycles, lowered the  
 9 cost of writing policies."  
 10 Of course, that's what they reported internally.  
 11 And did you evidence of that happening with the use of  
 12 Blaze Advisor by Chubb & Son?  
 13 A. I would say yes to that. I saw use of Blaze Advisor to  
 14 create a straight-through processing process for them, and  
 15 I would expect those benefits. Computers do something the  
 16 same way every time, and so humans don't; therefore, error  
 17 processes go down.  
 18 I would also like to point out that since I have  
 19 talked about my career at the Hartford, this happened after  
 20 I was no longer working with the Hartford.  
 21 Q. Understood. Thank you.  
 22 Let's go to the next slide. This is a  
 23 continuation of the same presentation but different  
 24 insurance companies. Agreed?  
 25 A. Agreed.

**1447****1449**

1 If you have a combined ratio greater than 100.0, you're  
 2 losing money on your underwriting process. If the combined  
 3 ratio is less than 100.0, you are making money. Your  
 4 underwriting process is profitable. That's the value of  
 5 the combined ratio.  
 6 Q. So an eight-point reduction in the combined ratio is  
 7 good; more money?  
 8 A. It is good from the perspective of something minus  
 9 eight is a lower number. If -- and I do not know these  
 10 numbers. I mean, I know -- pardon me. I know people at  
 11 Kemper Auto and Home, not many, but I am familiar with  
 12 them. But if their combined ratio -- and I'm going to go  
 13 with a little bit of hyperbole here. If their combined  
 14 ratio was 120 and they reduced it eight points, certainly  
 15 they would have an objective to reduce the combined ratio  
 16 because you're losing money on your underwriting process,  
 17 but what you would have done is -- if you received an  
 18 eight-point benefit, you would have gone from 120 to 112,  
 19 still more work to do.  
 20 Conversely, if that combined ratio had been 105  
 21 when they started the process of improving it and now  
 22 you're down to 98, you've entered into the arena of an  
 23 underwriting profit.  
 24 Q. And similarly, if you start off at an underwriting  
 25 profit with a combined ratio of 90 and you reducing it by

1 Q. And again, on the slide itself, it's being specific to  
 2 Blaze Advisor, Malaysia National Insurance Company  
 3 identifies Blaze in the solution column, republic Indemnity  
 4 identifies Blaze in the solution column, and Auto Club  
 5 Group identifies Blaze Advisor in the solution column?  
 6 A. Yes.  
 7 Q. And Malaysia National Insurance reports faster and more  
 8 consistent decisions, rapid updates as regulations and  
 9 corporate policies change.  
 10 And did you see that same kind of experience with  
 11 the defendants using Blaze Advisor?  
 12 A. I did.  
 13 Q. And Pacific Indemnity, improve data quality from all  
 14 channels and making it easier for all agents to do business  
 15 with the company.  
 16 Let me just focus on making it easy for the  
 17 agents to do business with the company, did you see  
 18 evidence of that with the defendants' use of Blaze Advisor?  
 19 A. Let me correct. It is actually Republic Indemnity, and  
 20 yes, I did see evidence of that.  
 21 Q. My bad.  
 22 A. My reading glasses are better than yours.  
 23 Q. I guess. And then Auto Club Group, talking about  
 24 increased straight-through profits and ease of doing  
 25 business, moved from manual review of 100 percent of all

**1450****1452**

1 applications to a review of 1 percent, as well as a 35  
 2 percent increase in number of applications processed.  
 3 In your review of the documents, did you see that  
 4 the defendants were able to improve on the percentage of  
 5 their renewal applications?  
 6 A. I saw that defendants were able to improve the  
 7 percentage of their renewals that did not require human  
 8 touch. Going back to the phrase "straight-through  
 9 processing." That's not exactly how this says it, but  
 10 that's what I saw.  
 11 Q. That's what you saw to the defendants.  
 12 A. Yes, and that's what this means.  
 13 Q. Okay. I'm going to move to another document, if this  
 14 thing works. There we go. And this document is called --  
 15 the title of the overall document is "Business Rules CoE  
 16 Update, January 2009."  
 17 MS. GODESKY: Your Honor, may I approach?  
 18 THE COURT: You may.  
 19 MS. GODESKY: Thank you.  
 20  
 21 (Side-bar discussion.)  
 22 MS. GODESKY: So these are all slides or  
 23 documents that are not in evidence, and I think it's  
 24 improper to keep publishing them page after page to the  
 25 jury. That happened with the document we just walked

1 demonstratives. This is information that he relied upon in  
 2 forming his opinions, and I think the jury needs to know  
 3 what he relied upon.  
 4 THE COURT: Okay. So with that understanding,  
 5 you can do it on the record, if you want. You can object.  
 6 I will admit them for demonstrative purposes only, but the  
 7 slides and the documents won't go back with the jury absent  
 8 foundation for the documents. Okay? So you can publish  
 9 them.  
 10 MR. HINDERAKER: Of course. I never thought that  
 11 the demonstrative would go to the jury.  
 12 MS. GODESKY: Will the Court know -- you're  
 13 accepting them for demonstrative purposes even though they  
 14 have these stamps on them? You know, I just -- stamps  
 15 suggest that they are in evidence.  
 16 THE COURT: I understand.  
 17 MS. GODESKY: Thank you.  
 18  
 19 (In open court with the Jury present.)  
 20 THE COURT: Actually, I will just go ahead and  
 21 instruct the jury on this.  
 22 Members of the Jury, the last document,  
 23 Exhibit 603, and this next document, Exhibit 605, are not  
 24 in evidence. They won't go back to the jury room with you.  
 25 The slides that are being displayed from those exhibits are

**1451****1453**

1 through, and now there is another one.  
 2 THE COURT: Are the slides within the documents?  
 3 MR. HINDERAKER: Yes.  
 4 THE COURT: Okay. So are these slides -- tell me  
 5 your objection again.  
 6 MS. GODESKY: My objection is --  
 7 THE COURT: That that document is --  
 8 MS. GODESKY: -- this is taken from P603, slide  
 9 28.  
 10 THE COURT: Right.  
 11 MS. GODESKY: And P603 is not in evidence. And  
 12 that's going to happen with the next document, too, and  
 13 several of the others. And while an expert can properly  
 14 testify about documents that aren't in the record --  
 15 THE COURT: Right.  
 16 MS. GODESKY: -- I don't think it's appropriate  
 17 to be publishing them. He can elicit testimony that he  
 18 relied on certain documents, he reviewed documents that say  
 19 certain things, but if we're publishing them, it's almost  
 20 like they're in evidence, right? The foundation hasn't  
 21 been laid through any FICO or Chubb witness, and so I think  
 22 we're just back-dooring publication to the jury at this  
 23 point. It's fair game for testimony, but not publication.  
 24 MR. HINDERAKER: I don't think we should be  
 25 changing the rules of the game at this stage. These are

1 simply used to illustrate the witness's testimony. They  
 2 are demonstrative exhibits only, despite the number, the  
 3 exhibit stamp on the documents.  
 4 Go ahead, Mr. Hinderaker.  
 5 MR. HINDERAKER: Thank you.  
 6 BY MR. HINDERAKER:  
 7 Q. Let us go now to this document that's on the screen  
 8 now, Business Rules CoE Update, January 2009. This is a  
 9 document you reviewed in forming your opinions?  
 10 A. Yes. Mr. Hinderaker, would you afford me the privilege  
 11 of just finding the document in the binders?  
 12 Q. Sure, of course. 0605 is the number.  
 13 A. Yes. It's easier on my neck.  
 14 I'm there. Thank you.  
 15 Q. Okay. Good. So as the slide shows, this is a Business  
 16 Rules CoE Update. And CoE stands for?  
 17 A. Center of Excellence.  
 18 Q. So this is an update of that Center of Excellence work.  
 19 I would like you to turn to page 14 of the  
 20 document.  
 21 A. I am there.  
 22 Q. Okay. And this is called "Business Rules in the  
 23 Insurance Value Chain as Classified Into Ten Categories."  
 24 Tell us what that means?  
 25 A. If we will look at the top line underneath the heading,

**1462****1464**

1 A. Mr. Hinderaker, the court record is important. Can I  
 2 ask you to read the last two sentences back? Okay. Go  
 3 ahead, sir.  
 4 Q. Don't worry about it.  
 5 With respect to the applications that defendants  
 6 had that use Blaze Advisor, one of them is CUW-IM?  
 7 A. Yes.  
 8 Q. IM being Inventory Management?  
 9 A. Yes, Commercial Workstation Inventory Management.  
 10 Q. Is that one of the -- is that an application that would  
 11 fall in the value chain of workflow routing and  
 12 orchestration?  
 13 A. Yes. Inventory management is, in fact, executing that  
 14 process I talk about, making sure the request gets to the  
 15 right party.  
 16 Q. Okay. And by "right party," are you saying the right  
 17 underwriter?  
 18 A. Yes, if it is going to be human underwriting.  
 19 Q. Yes. Let's use human underwritten for a moment.  
 20 A. So then the answer to the question is yes, and it's  
 21 going to get it to the right underwriting person.  
 22 Depending upon the complexity of the transaction, that  
 23 might be a special underwriting assistant. It might be  
 24 a -- it might be an underwriter. It's going to be somebody  
 25 in the underwriting department with the authority and

1 this element of value called predictive analytics.  
 2 A. Certainly. This takes place in two points. One of  
 3 their predictive -- and I'm going to use the phrase  
 4 "predictive modeling." That's probably a little more  
 5 familiar phrase with people.  
 6 The first point where predictive modeling use  
 7 Blaze Advisor was applied is a policy capability called  
 8 profitability model.  
 9 Q. Profitability Indicator?  
 10 A. I'm sorry. Profitability Indicator. I apologize.  
 11 Profitability Indicator is a computer model using  
 12 Blaze Advisor that created a prediction on profitability,  
 13 as the name says, based on a given price point. And then  
 14 the underwriter could look at that and say, oh, well, by  
 15 golly, the price point needs to go up X, 5 percent. Or the  
 16 Profitability Indicator could say, hey, by golly, you don't  
 17 need all this money, you can go down 5 percent. Okay? And  
 18 the 5 percent is just for examples. Okay?  
 19 Q. Sure.  
 20 A. So Profitability Indicator is a predictive modeling  
 21 application. It used Blaze Advisor, and it was deployed  
 22 into CSI Express.  
 23 Q. All right. And how about CIS Claims? Is that involved  
 24 in the predictive analytics category for value?  
 25 A. It does. CIS Express was a predictive model used

**1463****1465**

1 authorization to execute that transaction.  
 2 Q. Was it also used to direct the workflow and the  
 3 application to the underwriter with the appropriate  
 4 expertise to address -- the issue being to address the  
 5 policy for underwriting?  
 6 A. In the specific case of defendant, yes.  
 7 Q. Okay.  
 8 A. There are -- there are insurance companies out there  
 9 that don't really leverage that concept, but in this case,  
 10 that is accurate.  
 11 Q. The defendants did?  
 12 A. The defendants did.  
 13 Q. Were they also able to, with this CUW-IM, I'll call it,  
 14 extend the day?  
 15 A. Yes. Yes. Because if you have a submission of a  
 16 request for policy that arrives at four o'clock in, just  
 17 arbitrarily speaking, Boston, Eastern time, and the agent  
 18 has communicated, I really need input on this by the close  
 19 of business today, well, that's only one hour. But if you  
 20 had that expertise on the West Coast, now you take 5:00  
 21 p.m. and you extend it out to 6:00, 7:00- you extend it to  
 22 8:00 p.m.  
 23 Q. Let's go now to number ten, predictive analytics of --  
 24 did -- well, if you would describe for us how the  
 25 defendants used Blaze Advisor applications with respect to

1 primarily by the actuarial sciences folks --  
 2 Q. We're talking about CIS Claims.  
 3 A. I'm sorry. I'm sorry. CIS Claims is a predictive  
 4 model used in the actuarial sciences function. And what  
 5 it's doing is it's taking a hindsight view of policies, and  
 6 it's recalculating the proposed premium for it.  
 7 Q. All right.  
 8 A. Okay? And then that proposed premium, it could be spot  
 9 on, it could be exactly right, it can be too little, oh, my  
 10 goodness and we've got to adjust our pricing process, or it  
 11 could be too much and, again, we would have to adjust our  
 12 pricing process.  
 13 Q. Okay. Let's go to another slide that you reviewed,  
 14 another document. This is Business Rules Situation  
 15 Overview, and we're going forward in time to May 2014.  
 16 This is a document that you reviewed as part of your  
 17 analysis in forming your opinions?  
 18 A. Yes.  
 19 Q. And -- oops. And this document has the Donald Light  
 20 quote that we saw before.  
 21 A. Yes, it does.  
 22 Q. So Chubb & Son continues to reference that as it's  
 23 internally talking about Blaze Advisor.  
 24 A. Agreed.  
 25 Q. And then we've seen what drives the business value.

**1474****1476**

1 Indicator for the real-time scoring of risks that were  
 2 used -- to use a computer word, used to leverage Blaze  
 3 Advisor and their various applications?  
 4 A. Yes. All these were points of emphasis for the  
 5 deployment of Blaze Advisor.  
 6 Q. Through the applications?  
 7 A. Through the applications, correct.  
 8 Q. So what's the -- maybe you've covered some of this. So  
 9 what's the takeaway that you have from this part of your  
 10 analysis of the documentation?  
 11 A. I had several takeaways from this document. One of the  
 12 first was, well, this is my positive sign that the business  
 13 community, the underwriting -- that corporate underwriting  
 14 function, if you will, and the IT people are working hard  
 15 together to execute those corporate strategies and tactics.  
 16 Q. Okay.  
 17 A. I mentioned earlier the word "defend," defend and grow  
 18 that small to mid-size commercial, that was a point of  
 19 emphasis for me.  
 20 Q. Good.  
 21 A. There are other things on the slide. Would you like  
 22 for me to speak to them?  
 23 Q. I'm just wondering if we haven't already touched them  
 24 when we were talking about it from the document itself.  
 25 A. My answer would be, I have covered that thoroughly.

1 Chubb is talking to itself and saying -- is talking to  
 2 itself and saying, "The Profitability Indicator integration  
 3 with renewals project, these objectives were identified in  
 4 the business case."  
 5 And we have spoken about targeted nonrenewal,  
 6 focused retention, repatriation, upsell, cross-sell, right  
 7 pricing. From your review of the case documents, was the  
 8 defendant able to identify -- was the defendant able to  
 9 achieve each of those business objectives?  
 10 A. I would say most.  
 11 Q. Okay.  
 12 A. I'm not willing to comment on repatriation. I can show  
 13 you in the documents where it was an aspirational project  
 14 on the -- on the list for the future.  
 15 I also will say the same thing for upsell and  
 16 cross-sell. Upsell and cross-sell is spoken to through the  
 17 use of Blaze Advisor, in their deployment of Blaze Advisor  
 18 for underwriting guidance. I have seen instances where  
 19 the -- the underwriting rules, response to the underwriting  
 20 was, move to a better product.  
 21 I've seen rules, responses in the underwriting  
 22 guidance that said, hey, this is a specialty product;  
 23 cross-sell them to commercial insurance. I saw those. But  
 24 repatriation, aspirational.  
 25 Q. Okay. With that -- with the exception of repatriation

**1475****1477**

1 Q. Okay. That's why I moved on.  
 2 And then this is another document, another one  
 3 that you reviewed called "SBP Profitability Indicator for  
 4 New Business, Business Requirements." This is a document  
 5 you reviewed in forming your opinions?  
 6 A. It is.  
 7 Q. And going to -- this is August 2008. I'm going to take  
 8 you to page 4, and we have it on the screen as well. And  
 9 we have this header, "Project Background."  
 10 A. Yes.  
 11 Q. Then it is titled "The SBP Profitability Indicator," so  
 12 now we're more specific discussion of the small business  
 13 platform for Profitability Indicator?  
 14 A. Yes.  
 15 Q. All right. And then in many ways this is a repeat of  
 16 the earlier documents, so we don't need to spend a lot of  
 17 time on it, but "In creating the next-level operating model  
 18 aided by technology, to defend and grow Chubb's specialty  
 19 highly profitable small to mid-market book of business.  
 20 The key to survival in this market is efficient  
 21 underwriting, speed of response and low-cost structure."  
 22 A. The answer is yes. Let me, for the Court, point out  
 23 that SBP is simply small business platform, the beginning  
 24 document that we just looked at.  
 25 Q. All right. And then we can go to the next slide where

1 being aspirational, the other objectives were achieved?  
 2 A. Yes.  
 3 Q. Using Blaze Advisor?  
 4 A. Yes.  
 5 Q. Okay. We have seen this document before. It's in  
 6 evidence. It's the 2018 Annual Report of Chubb Limited?  
 7 A. Yes.  
 8 Q. In your review of the documents, did Chubb Limited take  
 9 this statement to heart, "Technology is a competitive  
 10 weapon"?  
 11 A. Yes.  
 12 Q. Okay.  
 13 A. Counselor, if I may add one point? When I entered the  
 14 industry, there were no personal computers. There was no  
 15 Duck Creek. As time went on and technology capabilities  
 16 increased, insurance companies moved to begin to adopt and  
 17 deploy those technologies.  
 18 Some companies were rapid adopters. Some  
 19 companies were slow adopters. But by the early 2000s, I  
 20 sat in executive groups where the phrase "adequate  
 21 technology" is table stakes to be in the game came about.  
 22 We just got to a point where if you weren't  
 23 technology-capable, the independent agents and brokers  
 24 weren't going to send you business.  
 25 Q. Got it. Got it. Let me -- I need to look for a

**1478****1480**

1 document. I'm going to -- if you would go to -- well, let  
 2 me --  
 3 This is the first page of a document,  
 4 Mr. Whitener, that you prepared, correct?  
 5 A. Correct.  
 6 Q. And here you are summarizing, from your review of the  
 7 documents of the defendant, the business reasons for using  
 8 Blaze Advisor in connection with selling insurance.  
 9 Agreed?  
 10 A. Agreed.  
 11 Q. And then in this document, which we won't -- in this  
 12 document -- well, I say "document" because I have it  
 13 printed, but then there are additional documents that  
 14 follow, slides if you will.  
 15 For example, in discussing speed and in  
 16 discussing precision, and we will go through each one of  
 17 those, but with respect to your analysis of each of those  
 18 attributes, at the bottom of the slide, you identify the  
 19 documents that are being summarized in that -- in that  
 20 analysis. Is that true?  
 21 A. That is correct.  
 22 Q. So you've identified all the source material that you  
 23 are looking to for a discussion of the meaning and the  
 24 application of these reasons for using Blaze Advisor from  
 25 the defendants.

1 BY MR. HINDERAKER:  
 2 Q. So let's, if we may, go through this.  
 3 A. My time is yours. My wife disagrees, by the way.  
 4 Q. Yeah, right.  
 5 All right. Let's keep working here. We're going  
 6 to go through each one of these. We've spoken about each  
 7 one to some extent, and let us go through each one together  
 8 now.  
 9 So turning to speed, if you would discuss how  
 10 Blaze Advisor was used by the defendants with regard to the  
 11 attribute -- positive attribute, in selling insurance that  
 12 we are calling speed.  
 13 A. Each of these points in the slide, again, come from a  
 14 defendant document that I reviewed, so let me start at  
 15 50,000 feet. Speed is important. The faster you respond  
 16 to an agent, the faster you bring product to market, the  
 17 faster you modify existing products for approval by the  
 18 regulatory, statutory powers, the better you are. Okay?  
 19 Q. Okay.  
 20 A. So, was -- was speed a goal for defendant? Yes.  
 21 Q. And was that goal achieved?  
 22 A. Was Blaze Advisor deployed to make things -- to make  
 23 things faster? Yes. That goal was achieved.  
 24 Q. Okay.  
 25 A. Okay.

**1479****1481**

1 A. Yes.  
 2 MR. HINDERAKER: Your Honor, this has been marked  
 3 as Exhibit 1137A. It is this slide and the following  
 4 slides that speak to each of these elements, with the  
 5 identification of all of the documents that are being  
 6 referenced, and this notebook is all of the documents that  
 7 are being referenced.  
 8 And I offer as a Rule 1006 summary this  
 9 Exhibit 1137A. 1137A.  
 10 MS. GODESKY: Objection.  
 11 THE COURT: Counsel, approach.  
 12  
 13 (Side-bar discussion.)  
 14 THE COURT: Well, my question at least is, have  
 15 all of those underlying documents already been admitted?  
 16 MR. HINDERAKER: No.  
 17 THE COURT: Then I think 1137A has to be a  
 18 demonstrative.  
 19 MR. HINDERAKER: A demonstrative?  
 20 THE COURT: Mm-hmm.  
 21 MR. HINDERAKER: Fair enough.  
 22  
 23 (In open court with the Jury present.)  
 24 THE COURT: Mr. Whitener, make sure your  
 25 microphone is back on.

1 Q. Execute decisions faster even in real-time.  
 2 A. Yes. I mean, if I -- if I go to the discussion of my  
 3 early days in underwriting, and I take you back to some of  
 4 my opening comments, the personal insurance group of  
 5 products is more simple. The commercial suite of -- main  
 6 street commercial suite of process increases in complexity.  
 7 The specialty insurance market base is more complex. Each  
 8 of those groups would have an amount of time it would take  
 9 to underwrite a policy, to underwrite a renewal.  
 10 So if in that market segment you have deployed  
 11 Blaze Advisor through Automated Renewal Processing, Phase 1  
 12 and Phase 2, and you have successfully done it, each of  
 13 those renewal policies that is coming through is going to  
 14 be done much faster, and the renewal offer is going to make  
 15 it to the independent agent and the policyholder faster.  
 16 If you look at new business -- and I'll use  
 17 specifically DecisionPoint in this case. If you have a  
 18 market-facing portal that will deliver back a real-time  
 19 quote and inside of that you embed other functions in terms  
 20 of the underwriting process, the rules, and you embed the  
 21 Profitability Indicator and you respond in real or near  
 22 real-time back to that request, that increases your  
 23 probability of converting the quote into a policy.  
 24 So yes, executing decisions faster was  
 25 accomplished.



1482

1484

1 Q. Do you agree with their statements in their documents  
 2 that speed is a key to survival in this market for  
 3 efficient underwriting and response and low-cost structure?  
 4 A. Yes. Multiple documents of the defendant emphasized  
 5 the need for speed and the deployment of Blaze Advisor to  
 6 accomplish that.  
 7 Q. Let's go to precision. We spoke about this in the  
 8 context of predictive modeling. And was the application  
 9 called Profitability Indicator one of the applications that  
 10 did predictive modeling?  
 11 A. Yes.  
 12 Q. And what else about precision did you see in the  
 13 defendants' documents that was significant relative to the  
 14 use of Blaze Advisor?  
 15 A. I'll initially in this discussion link back to  
 16 DecisionPoint, where you get a quote in real or near  
 17 real-time. With that precise premium, accurate premium,  
 18 you increase your precision of your pricing, which  
 19 theoretically now means that when you come back and you  
 20 look at that policy in the future through CIS Claims, the  
 21 actuarial analytical, the actuarial analytical comes back  
 22 and says, we did great. That's perfect. We got the price  
 23 right.  
 24 Q. Were the defendants able to use Blaze Advisor to  
 25 elevate decisionmaking to the level of the organization's

1 Q. All right. And with that exception, they had gotten to  
 2 the rest of them?  
 3 A. Yes.  
 4 Q. Then let's go to consistency. Why is consistency  
 5 important to selling insurance?  
 6 A. Consistency has two aspects. The first aspect is, the  
 7 agents and brokers do not like to be surprised. They --  
 8 they want to know what's coming. So if you consistently  
 9 execute a request for quote on a specific type of  
 10 policy/state combination, that accrues to your benefit; you  
 11 are being consistent.  
 12 The other place that consistency applies is in  
 13 the execution of the underwriting rules because a computer  
 14 is going to take a set of facts, ten -- ten fact points.  
 15 Okay? And it's going to analyze it and come to the same  
 16 conclusion every time as long as all ten of those fact  
 17 checks are unchanged.  
 18 We humans, we're not particularly good at that.  
 19 There is a reason I've never bowled a 300 game, and it's  
 20 because I can't do the same thing over and over again well  
 21 all those times.  
 22 Q. Okay. Agility. From your review of all of the  
 23 documentation, there is a number of bullet points of what  
 24 follows from being agile. Could you discuss some of those?  
 25 A. Certainly. Being agile is the twin of being fast.

1483

1485

1 top expert?  
 2 A. The capability was there -- I would actually need to  
 3 know who wrote -- so let me delineate. I've seen this  
 4 through testimony.  
 5 There are two aspects to the rules. There is the  
 6 what should the rule be? I'm going to use the word  
 7 "writing the rule," or the phrase, excuse me. And then  
 8 there is the transfer of that rule into technology. Okay?  
 9 And I'm going to use the phrase "authoring the rule."  
 10 So when it comes to writing the rules, until I  
 11 know who in the corporate underwriting function wrote those  
 12 rules, I can't -- and then the transfer of those rules and  
 13 the document transfers them, I can't say that. I can't say  
 14 Blaze Advisor can make this happen if the deployment  
 15 chooses to.  
 16 Q. If they want to. Exactly so.  
 17 And the other bullet points that are on this  
 18 screen for precision, you saw those bullet points in all of  
 19 their documentation as well?  
 20 A. All but one. The reduced claim leakage. Again, I have  
 21 found no indication that Blaze Advisor was deployed into  
 22 the claim system. Much like cross-sell and upsell, this  
 23 was aspirational.  
 24 Q. Got it.  
 25 A. They hadn't gotten there yet.

1 Being fast is just, get her done. Agile is, change  
 2 quickly. Okay?  
 3 And so there -- there were times where an  
 4 opportunity raised its head and pre- deployment of Blaze  
 5 Advisor -- pardon me -- that deployment didn't -- didn't  
 6 meet the needs of the business -- of achieving the business  
 7 opportunity, and after Blaze Advisor, it did.  
 8 Q. What was that example?  
 9 A. That is Chubb Custom Market. It's a 25 million dollar  
 10 book of business that Chubb was looking to acquire from  
 11 another insurance company.  
 12 Q. And using Blaze Advisor, they achieved that?  
 13 A. Well, what they did -- to achieve that, they had to  
 14 modify their booking process, and they used Blaze Advisor  
 15 to accelerate the modifications that were needed to the  
 16 booking process so that they could get the business.  
 17 Q. So they were -- they increased their speed and got the  
 18 opportunity.  
 19 A. Yeah.  
 20 Q. Okay.  
 21 A. There are some -- there are some other points in here  
 22 that I will --  
 23 Q. Well, I'm going to go back.  
 24 A. Thank you.  
 25 Q. Yeah.



**1486****1488**

1 A. The legacy modelization observation I think is  
 2 important. I have been involved in several processing  
 3 transitions for policy administration, for billing, for  
 4 claims, not nearly as much in claims. It is -- it is  
 5 difficult for exceedingly large companies.  
 6 And just to arbitrarily pick on one, I'm insured  
 7 by State Farm. They're still using many legacy systems  
 8 because the transition to more modern technology is  
 9 difficult. So what they do is, they use modern technology  
 10 to supplement the core legacy system sitting in the  
 11 background. Okay?

12 And that was -- that was one of the things that  
 13 they were doing with Premium Booking modernization.

14 Q. One of the things the defendants were doing with  
 15 Premium Booking modernization?

16 A. That is correct.

17 Q. Okay. Moving on to scale, from your review of the  
 18 documents, was this achieved with Blaze Advisor?

19 A. Yes. They processed -- they processed business with  
 20 the same amount of humans.

21 Q. They processed more business --

22 A. More business. I'm sorry. I left out "more."

23 The underwriting talent of an insurance company  
 24 is expensive to build, and it is a critical human resource  
 25 strategy to retain. You know, you don't -- you don't want

1 Q. And why is that valuable?

2 A. Well, there are two -- there are two things that the  
 3 underwriter's time would be allocated to, and the most  
 4 important is that relationship with the agent and broker.  
 5 It frees them to spend more time with the agents and  
 6 brokers, working on that loyalty aspect of the relationship  
 7 that I talked about.

8 The other thing it does, is it's completely  
 9 possible now that you have underwriting capacity to pursue  
 10 or evaluate new opportunities, new projects, because if  
 11 you're -- if you're touching renewals with humans, those  
 12 humans' times is being lapsed, it's being used.

13 Now they have that time, and you can say things  
 14 like, wow, maybe we should have a combined auto and  
 15 homeowners policy, and I'll bet you Bick Whitener would  
 16 bill that for us.

17 Q. Got it. All right. Yes. And now let's go to  
 18 compliance. I take it you don't sell insurance policies --  
 19 you have the stay-out-of-jail rule. You don't sell  
 20 insurance policies without being in compliance with state  
 21 regulations and the company's requirements?

22 A. Correct.

23 Q. All right.

24 A. The CEO's with whom I worked, if I had to walk into  
 25 their office and tell them that we had egregiously breached

**1487****1489**

1 to lose any percentage of your underwriting staff unless  
 2 they're just not good at it. Okay? And insurance  
 3 companies have lots of process and procedure to monitor  
 4 those things.

5 So if you can take -- and, again, I'm going to  
 6 use arbitrary numbers, if you can take a staff of 100 and  
 7 they're doing 200 policies, and now all of a sudden through  
 8 the deployment of technology you have a staff of 100, and  
 9 now they can do 400 policies, they want to do that.  
 10 That -- that's scale, and that is a point that Blaze  
 11 Advisor was used at because now all of a sudden that  
 12 eight-hour day, zero -- well, not zero. Anytime -- well,  
 13 yeah. Anytime a policy was coming up for renewal -- and I  
 14 remember in my underwriting days, I had to underwrite  
 15 renewals at my desk. If a policy was coming up for renewal  
 16 and the automated renewal processing project allowed that  
 17 to go straight through and a human didn't have to touch it,  
 18 that is underwriting time that can be allocated to  
 19 something else.

20 Q. And I want to move on to that. You said the  
 21 underwriter is a critical human resource in the insurance  
 22 company. Is there value in freeing the underwriter's  
 23 time -- letting Blaze Advisor do some of the work, is there  
 24 value in freeing the underwriter's time to do other things?

25 A. Yes.

1 the rules of a state, I would not be well-received.

2 Q. And did -- understood. And did -- did the defendants  
 3 use Blaze Advisor in any of the applications to -- to be in  
 4 compliance with the requirements of the State?

5 A. They used Blaze Advisor to both be in compliance with  
 6 the State and company requirements. And they used Blaze  
 7 Advisor to control ranges where underwriting flexibility on  
 8 a certain item, it had a ceiling, it had a floor, and you  
 9 just had to make sure you stayed within that ceiling/floor.

10 Q. Okay. And so we've heard testimony about Texas  
 11 Accident Prevention Program, TAPS, an application the  
 12 defendants used with Blaze Advisor. Is that an example of  
 13 staying in compliance with state requirements?

14 A. Yes.

15 Q. And then you mentioned applications that were used --  
 16 you mentioned how through Blaze Advisor containing  
 17 applications, they stayed in compliance with their own  
 18 company requirements?

19 A. Yes. Individual rate modification application would be  
 20 a good example of this. On certain types of policies in  
 21 the commercial insurance arena, you are allowed to file  
 22 your rates in such a way that there is a -- there is a --  
 23 you can't go over this, and you can't go below that, and  
 24 that provides the underwriter some flexibility in terms of  
 25 that pricing process as they're working on the quote.

**1490****1492**

1 Q. And so that application that we now call IRMA was using  
 2 Blaze Advisor to inform the underwriters of the range  
 3 consistent with state regulation in which they could work  
 4 on the premium for the policy?  
 5 A. I would say that a little differently.  
 6 Q. How would you say it?  
 7 A. But -- but the job of IRMA, Individual Rate  
 8 Modification Application, with Blaze Advisor was to just  
 9 simply not let the underwriter choose a point that was  
 10 outside of the range.  
 11 Q. Okay.  
 12 A. The nice thing about -- the nice thing about IRMA and  
 13 other rules is, you've got to obey them.  
 14 Q. Got it. All right. I understand. I think we're --  
 15 different ways of saying that.  
 16 And then let's go to ease of doing business.  
 17 We've spoken about this before. This is the relationship  
 18 between the underwriter and the independent agent/broker.  
 19 A. Yes.  
 20 Q. And using Blaze Advisor, from your review, were the  
 21 defendants able to improve the ease of doing business  
 22 between themselves and the independent agents and brokers?  
 23 A. Yes. The independent agents and brokers got more  
 24 consistent answers. The independent agents and brokers got  
 25 faster responses. The independent agents and brokers got

1 Just a housekeeping from yesterday, we have  
 2 spoken with the jurors, and they are unwilling and/or  
 3 unable to go to 5:30, which we couldn't have done last  
 4 night because the building, by the way, was shutting off  
 5 all the water, which means many horrible consequences  
 6 result.  
 7 However, they're willing to shorten their lunch  
 8 break to 30 minutes. And, Ms. Godesky, since you raised  
 9 the issue, do you want to have a 30-minute lunch break  
 10 today so that we can move things more quickly?  
 11 MS. GODESKY: That's fine with defendants.  
 12 THE COURT: Mr. Hinderaker, can you live with  
 13 that?  
 14 MR. HINDERAKER: I'm going to try.  
 15 THE COURT: Okay. So plan accordingly,  
 16 obviously, get your food here. We'll also take up the  
 17 issue then --  
 18 MS. KLIEBENSTEIN: Can I jump in, Your Honor?  
 19 THE COURT: You may.  
 20 MS. KLIEBENSTEIN: Why -- let's just go through  
 21 this. So Ms. Pawloski is coming tomorrow, and Mr. Waid is  
 22 going today. So the concern about tomorrow is what again?  
 23 THE COURT: It's both Mr. Harkin and  
 24 Ms. Pawloski, and I think we're just trying to ensure that  
 25 Ms. Pawloski can get on and off the stand tomorrow.

**1491****1493**

1 consistency. This -- this was a tactical deployment aimed  
 2 at benefitting ease of doing business in addition to some  
 3 of the other value points we discussed.  
 4 Q. Okay. Now, I want to turn the subject matter to the  
 5 different kinds of systems that insurance companies use in  
 6 terms of selling insurance. And we'll review the different  
 7 kinds of systems, give that an overview, and then we can  
 8 identify the various applications and put them in their  
 9 appropriate systems. Okay?  
 10 A. Fine.  
 11 THE COURT: Mr. Hinderaker, it sounds to me like  
 12 this might be a convenient breaking point for the morning  
 13 break.  
 14 MR. HINDERAKER: I fully agree with you.  
 15 THE COURT: Okay. Thank you.  
 16 Members of the Jury, we will take our morning  
 17 recess. Be back in the courtroom at 15 minutes to 11:00.  
 18 Thank you.  
 19 THE CLERK: All rise for the jury.  
 20 (Jury exits.)  
 21  
 22 (In open court without the Jury present.)  
 23 THE COURT: Go ahead and be seated.  
 24 Mr. Whitener, you can go ahead and step down.

1 MS. GODESKY: Yes, and we're communicating with  
 2 her to figure out what our plan is. But I just think  
 3 generally we need to move things along because, you know,  
 4 we're still in the middle of direct of Mr. Whitener, and so  
 5 I don't even have confidence that we're going to be able to  
 6 start our case midday tomorrow at this point.  
 7 THE COURT: We'll see, but --  
 8 MS. KLIEBENSTEIN: Here's -- so late last night  
 9 at 11:30 we got new exhibits that deal with Mr. Harkin.  
 10 Here is my concern: I do not want Mr. Harkin to start  
 11 today. I don't think nobody is really concerned about  
 12 that.  
 13 MS. GODESKY: No.  
 14 MS. KLIEBENSTEIN: It's tomorrow? Okay. Then I  
 15 am going to sit down.  
 16 THE COURT: We will take a half an hour at lunch.  
 17 Twenty minutes after we break, we will take up the issue of  
 18 Mr. Waid's testimony that was raised this morning. Okay?  
 19 So you guys get effectively 20 minutes, as do I.  
 20 MS. GODESKY: Your Honor, before we go off the  
 21 record, I do want to at this point renew our objection to  
 22 Mr. Whitener's qualifications under Rule 702, and we move  
 23 to strike his testimony and instruct the jury to disregard  
 24 it.  
 25 FICO conceded that he was not an expert in

**1494****1496**

1 decision management software, let alone Blaze. Defendants  
 2 asked for a voir dire of his credentials. We didn't have  
 3 that opportunity. He was essentially presented based on  
 4 Mr. Hinderaker's representation that he would be talking  
 5 about insurance principles, and we have now listened to  
 6 four hours of freewheeling testimony about the value of  
 7 Blaze to Chubb. And we are defending a 21 billion dollar  
 8 revenue disgorgement claim, and it is enormously  
 9 prejudicial to have this presented to the jury when he is  
 10 not meeting the standards of Rule 702.

11 THE COURT: The motion is denied. On the  
 12 question of whether you were permitted to voir dire the  
 13 witness, what I said yesterday was that we would take this  
 14 up as appropriate during the testimony, so I didn't deny  
 15 you that opportunity. I denied you that opportunity at the  
 16 outset of his testimony.

17 Regardless of that, I understand the defendants'  
 18 objection. Having read and re-read Judge Wright's order, I  
 19 believe the objection falls within her prior ruling that  
 20 Mr. Whitener's methodology and his opinions are admissible  
 21 and that the issues you're raising, including his  
 22 qualifications, because that was really raised in the guise  
 23 of his methodology, in my view. But regardless of that,  
 24 the concerns you are raising in my judgment go to the  
 25 weight and credibility of the witness's testimony.

1  
 2 (In open court with the Jury present.)  
 3 THE COURT: Be seated.  
 4 Mr. Hinderaker, you may proceed.  
 5 MR. HINDERAKER: Thank you.  
 6 BY MR. HINDERAKER:  
 7 Q. As we said just at the break, there are three different  
 8 kinds of functions related to selling insurance: Policy  
 9 administration systems, compliance systems, and utility  
 10 systems. Agreed?  
 11 A. Agree.  
 12 Q. I think we've spoken about the policy administration  
 13 systems, and we can do that more in the context of the  
 14 specific applications.  
 15 We've spoken about the compliance systems, and we  
 16 can do that a bit more in the context of the specific  
 17 applications.  
 18 And then let's talk about the utility systems as  
 19 well in the context of the specific applications.  
 20 A. Agreed.  
 21 Q. So the first set is the policy administration system  
 22 applications. And in overview, is this correct that these  
 23 are the systems that execute the "bind, book and issue"  
 24 process that you have described for us?  
 25 A. Yes.

**1495****1497**

1 So -- but your issue is preserved.  
 2 MS. GODESKY: Thank you.  
 3 THE COURT: Thank you. We will be back.  
 4 (Recess taken.)  
 5  
 6  
 7 (In open court without the Jury present.)  
 8 THE COURT: Be seated. Mr. Whitener, before the  
 9 jury comes in, I'm going to give you a couple of  
 10 instructions.  
 11 THE WITNESS: Yes.  
 12 THE COURT: Slow down, number one.  
 13 Number two, I know you wouldn't know this, but  
 14 you can't ask questions, okay, of your lawyer or of court  
 15 staff. Allow that to happen properly, if it's going to  
 16 happen. Okay?  
 17 THE WITNESS: Yes, sir.  
 18 THE COURT: All right.  
 19 We will -- we're going to chew up that lunch  
 20 hour, 30 minutes, on the early side, so we're going to go a  
 21 little bit later now, and then we will plan to break at  
 22 12:30.  
 23 THE CLERK: All rise for the jury.  
 24 (Jury enters.)  
 25

1 Q. And is it these systems that would be the ones to  
 2 modify existing policies, either to cancel or renew as  
 3 well?  
 4 A. Yes.  
 5 Q. And is it also the truth -- true that the defendants  
 6 with Blaze Advisor policy administration system  
 7 applications automated the business decisions in the steps  
 8 of selling insurance?  
 9 A. Were deployed, yes.  
 10 Q. Yes. And these defendants chose to use Blaze Advisor  
 11 as one of the technologies in their policy administration  
 12 systems -- systems?  
 13 A. Yes.  
 14 Q. And is it possible to sell insurance without a policy  
 15 administration system?  
 16 A. Not and be competitive.  
 17 Q. All right. So let's turn to the applications. And do  
 18 you place each of these ten applications in the category  
 19 of -- of a policy administration system?  
 20 A. I do.  
 21 Q. All right. So we have CSI Express, Automated Renewal  
 22 Processing 1 and 2, Profitability Indicator, DecisionPoint,  
 23 Evolution Canada, Evolution Australia, EZER for the  
 24 European United Kingdom zone, Adapt for Europe, Adapt for  
 25 Australia and Cornerstone. Those are the ones?

1498

1500

1 A. Yes.

2 Q. All right. Now let's look at what the Blaze Advisor

3 function was in these applications.

4 With respect to CSI Express, is that accurate

5 from your analysis?

6 A. It is.

7 Q. So predictive modeling, policy scoring and underwriting

8 guidance?

9 A. Yes.

10 Q. And then for Automated Renewal Processing 1 and 2, is

11 that accurate from your assessment of the evidence?

12 A. It is.

13 Q. So ARP-1 is the renewal categorization, whether it can

14 or cannot be automated -- whether it can or cannot be

15 straight-through process, and ARP-2 is the policy renewal

16 automation?

17 A. Correct.

18 Q. And did ARP-2 include endorsement generation?

19 A. It did.

20 Q. Profitability Indicator, we've spoken about that, I

21 think. The predictive modeling, the scoring?

22 A. Yes.

23 Q. That was a Blaze Advisor application, correct?

24 A. Correct.

25 Q. And then DecisionPoint, rules tables and pricing

1 A. Yes.

2 Q. And the Adapt application in European and Australia --

3 in Europe and Australia was also underwriting guidance?

4 A. Yes.

5 Q. And then Cornerstone was -- would you describe -- we

6 haven't really touched on Cornerstone, bond and transaction

7 validation, workflow routing. How was Blaze Advisor used

8 in Cornerstone?

9 A. Cornerstone is the policy administration system for

10 surety bond type of products. They're a little bit of a

11 different animal, but Blaze Advisor was used for these

12 steps for the workflow routing and for the validation.

13 Q. Saying they're a different animal, is it accurate to

14 say that underwriting a surety bond transaction is a bit

15 more complex than commercial?

16 A. Yes.

17 Q. And is that because of the risk that is associated with

18 underwriting -- with surety bonds?

19 A. Yes.

20 MS. GODESKY: Objection. Leading.

21 THE COURT: Sustained.

22 BY MR. HINDERAKER:

23 Q. Tell us why, please.

24 A. Surety bonds are a little bit of a different animal

25 because the exposure risk is higher.

1499

1501

1 calculations, I don't think we spoke about that yet. Could

2 you describe what that was using Blaze Advisor?

3 A. Yes. I'm sorry. DecisionPoint is the market-facing

4 capability for the -- for an approach into four products.

5 Okay? It -- it brought information in. It priced it. It

6 went through the process of taking it through the

7 underwriting guidelines for those specific products, and it

8 was capable of giving back a real-time quote based on

9 defendant documents.

10 Q. And so the eligibility determination is, in the steps

11 of selling insurance that we looked at, that is the

12 yes-or-no box?

13 A. Yes. It's the yes-or-no box. It is, does this meet

14 the underwriting criteria, yes or no.

15 Q. And endorsement generation we spoke about.

16 And data normalization, would you tell us what

17 that was?

18 A. Actually, this was referred to earlier. Data

19 normalization is just -- it's going to outside databases

20 and saying, hey, the data that you have given me here

21 doesn't match. As an example, I about every 45 days get a

22 notification from the U. S. Postal Service that my address

23 is wrong, and it's because of a period.

24 Q. Okay. Then Evolution Canada and Australia, the Blaze

25 Advisor function was underwriting guidance?

1 Q. Uh-huh.

2 A. But more importantly, the exposure risk is higher

3 because in all of the insurance I have been talking about

4 at this point, there are two parties. There is the --

5 there is the applicant who is going to have the policy, and

6 there is the writing company providing the policy. In

7 surety -- in surety bond there are now three players.

8 There's the -- because surety bond is functionally a

9 performance guarantee. So when you see large construction

10 projects, every one of those contractors, the people that

11 gave them the contract, to get the contract, they demand a

12 surety bond.

13 The contractor has to get the surety bond, so you

14 have the -- the person receiving the service, you have the

15 person providing the service, and you have the insurance

16 company providing the financial protection in terms of the

17 guarantee. A little more complicated, a little more

18 involved.

19 Q. Okay. So that's the overview of those policy

20 administration applications or systems and the applications

21 within them. I want to go now -- have you review for us

22 your analysis of the defendants' documents with respect

23 to -- with respect to them.

24 Perhaps the most efficient way to do that is if I

25 could ask you to speak to the --

**1502****1504**

1 THE COURT: Counsel, approach, please.

2

3 (In open court with the Jury present.)

4 THE COURT: Please put that back up. Thank you.

5

6 (Side-bar discussion.)

7 THE COURT: Sorry, but the second to the last

8 bullet point on that slide refers to the cost of basically

9 replacing and getting the application new. I want to make

10 it clear, you're talking about the CSI Express application.

11 MR. HINDERAKER: I am.

12 THE COURT: Okay. I just wanted to make sure, as

13 opposed to --

14 MR. HINDERAKER: Not the whole schmiel.

15 Application by application. There will be a couple other

16 instances of that, but it's application by application.

17 THE COURT: And the applications we're

18 referencing are the applications of Chubb.

19 MR. HINDERAKER: Only, yes.

20 THE COURT: Okay. I just wanted to make sure.

21

22 (In open court with the Jury present.)

23 BY MR. HINDERAKER:

24 Q. In my view, this is important information, and I'm also

25 trying to think about the most efficient way to convey the

1 at Chubb and that product development function I -- product

2 management function I spoke to can take a book of business

3 or a product and it can take all of that -- all of those

4 policies, and it can change rules and parameters and get a

5 result back that says, hey, if you do this, this is what we

6 expect to happen, which is very powerful.

7 And the last point I will make -- the last two

8 points I'll make is, this is one of the places where the

9 predictive modeling capability turned into Profitability

10 Indicator is applied, and it used Blaze 7.1.

11 Q. Okay. Then let's do a similar approach with Automated

12 Renewal Processing. We'll combine both ARP-1 and ARP-2.

13 From the documents and your review, if you would explain

14 for us the significance of the bullet points you put on

15 this slide.

16 A. Certainly. So with the goal for straight-through

17 processing and the goal to improve speed and the goal to be

18 easier -- I'm sorry. I apologize.

19 The first goal being straight-through processing;

20 the second goal being improved speed; the third goal being,

21 it would be easier to do business with, using Blaze Advisor

22 7.1, defendant built two renewal processing projects. They

23 deployed ARP-1, when ARP-1 was just simply a

24 categorization. Here is a policy's risk characteristics.

25 It fits into high touch, the underwriter has to do this.

**1503****1505**

1 information. So I'm suggesting, Mr. Whitener, if -- using

2 this slide, if you could speak to the bullet points that

3 you have put on the slide regarding the CSI Express

4 application, and tell us in your view the significance at

5 the defendants.

6 A. Certainly. CSI Express is the policy administration

7 system for the specialty products of defendant. You will

8 notice in the -- in the second bullet point that we note

9 from defendant documentation that they have 113 of those

10 specialty products. So CSI Express is doing the policy

11 processing, it's doing the new business, the quotes, the

12 renewals, the terminations. It's executing -- or managing

13 the execution of the "bind, book, issue" process for these

14 products.

15 CSI Express is the named application, computer

16 system in the 2006 RFI, requesting the information about

17 solutions. There is a lot of other information on here.

18 Let me highlight just one or two things, and I'm going to

19 look at the slide to do this, because I don't remember the

20 details.

21 Q. Please look.

22 A. Probably the most important point here is the fact that

23 it supports Automated Renewal Processing, so that's through

24 two projects, ARP-1 and ARP-2. It has a simulation tool in

25 it, a what-if, so that the corporate underwriting process

1 Low touch, maybe somebody else can do it, an underwriting

2 assistant. And no touch.

3 But with ARP-1 even though it categorized it no

4 touch, the system still wouldn't issue the renewal. I

5 mean, a -- a minor, minor amount of human interaction was

6 required. When they flushed out and implemented and

7 deployed ARP-2 now in that no-touch category, that minor

8 amount of button-pushing was no longer required.

9 The goal that was stated in the documents was to

10 eventually get to 90 percent of the renewals going through

11 straight-through processing within three years. It's a --

12 it's a learning process. It's a step-by-step process. So

13 you would go in, and if you had stuff that categorized at

14 high touch, you would look at it, and say, anything we can

15 do with the rules.

16 If it were low touch, you would now be looking

17 at, okay, what can we do that might turn more of those into

18 low touch. So it is an iterative process, if you'll allow

19 me that phrase.

20 Q. And then no touch would be characterized as

21 straight-through processing?

22 A. Yes. No touch and straight-through processing mean the

23 same thing.

24 Q. And in your review of the defendants' documents, did

25 you see where they were able to change the renewal rules



**1506****1508**

1 within a couple days as compared to months using Blaze  
 2 Advisor?  
 3 A. Yes. Defendant documents have several statements that  
 4 say that the use of Blaze Advisor in this rule modification  
 5 process modified the time frame to change rules from three  
 6 to four months to -- and I'm going to use less than a week.  
 7 It was three or four days.  
 8 Q. With Blaze Advisor, three or four days?  
 9 A. Correct.  
 10 Q. And then Blaze Advisor 7.1, was that the version being  
 11 used for ARP-1 and ARP-2?  
 12 A. That also was correct.  
 13 Q. Profitability Indicator, I know we've spoken some about  
 14 that, so we don't have to repeat what we have heard, but to  
 15 save time, from your review of the documentation and the  
 16 things that you put on the slide, could you speak to the  
 17 ones we haven't addressed?  
 18 A. Profitability Indicator uses -- or used Blaze 7.1.  
 19 Profitability Indicator's job was to enable the  
 20 underwriting function to have a more accurate and precise  
 21 price in the quoting or in the renewal process. It  
 22 accomplished that well.  
 23 There are several things in here that I mentioned  
 24 that I had seen as desires: Cross-sell, upsell,  
 25 repatriation. I see indication that none of those were

1 Q. Of course, you noticed on the bullet point that it was  
 2 available 24/7, given the nature of that.  
 3 And you said the four -- four kinds of products.  
 4 D&O means what, please?  
 5 A. Directors and officers.  
 6 Q. EPL means what?  
 7 A. Employment practices liability.  
 8 Q. Crime means?  
 9 A. Crime.  
 10 Q. And fiduciary means?  
 11 A. Fiduciary is financial protection for financial  
 12 institutions against employee malpractice -- employee  
 13 misbehavior.  
 14 Q. And what is the significance in closing a sale of an  
 15 insurance policy if you're able to issue the quote at the  
 16 point of sale, right at the point of sale?  
 17 A. You accomplish two things. The first one is that much  
 18 faster than it having to come into the office and being  
 19 touched by an underwriting process. And as I've mentioned  
 20 before, the faster you respond to quotes, the higher the  
 21 probability that you convert the quote to a policy. And in  
 22 all of my years of experience, quote conversion percentage  
 23 was an important -- it was a key performance metric, if you  
 24 will.  
 25 The second thing is, with this happening so fast,

**1507****1509**

1 actually fully implemented but that they were in the  
 2 underwriting guidance.  
 3 Q. They were in the underwriting guidance?  
 4 A. Yeah, they're in the underwriting guidance. Cross-sell  
 5 this, upsell that. Repatriation, no indication that  
 6 anything was done.  
 7 Q. So with cross-sell and upsell, if not fully  
 8 implemented, they had begun to do that?  
 9 A. They had begun to help the underwriters with that, yes.  
 10 Q. DecisionPoint, same process, if you will. Trying not  
 11 to repeat what we said already, but speak to the  
 12 significance of what you saw Blaze Advisor doing for the  
 13 defendants with DecisionPoint.  
 14 A. My review of the defendants' documents indicated that  
 15 DecisionPoint was -- was a market-facing capability,  
 16 meaning that you could get to it through the Internet. I  
 17 believe the Internet address was at Chubb. It had -- the  
 18 interface initially has a number of commercial and  
 19 specialty types of products with it, and this -- this was  
 20 used with four specific products. It allowed the  
 21 underwriting process and profitability -- with  
 22 Profitability Indicator to be able to provide a quote and  
 23 through a technology process that would allow the agent and  
 24 the customer to accept it and the binding take place right  
 25 there.

1 you are being easy to do business with, and the combination  
 2 of speed and ease of doing business helps with the  
 3 relationship with the agent and broker.  
 4 Q. And then the DecisionPoint application, you have here,  
 5 files all supporting documentation to commercial  
 6 underwriter's workstation.  
 7 DecisionPoint, why don't you describe the  
 8 relationship, then -- the interrelationship between  
 9 DecisionPoint and the information into underwriter's  
 10 workstation?  
 11 A. Sure. So DecisionPoint is going to gather a lot of  
 12 information, and what's it's going to do in the execution  
 13 of the "bind, book, issue" process, is it's going to make a  
 14 decision. Its decision that it makes, its price that it  
 15 applies to the quote, all of that is going through a  
 16 communications interface to go back to the -- to the  
 17 commercial underwriter workstation, which is a -- it's an  
 18 application that is there for the underwriters to be able  
 19 to see information about the policies and any -- any  
 20 pertinent interactions between the underwriter or the  
 21 special underwriting assistant and the independent agent  
 22 and broker.  
 23 Q. On your slide here, you have the statement that the  
 24 estimate of cost to purchase new or develop internally is  
 25 between 5 and 10 million dollars. That's speaking



**1510****1512**

1 specifically to the DecisionPoint application?

2 A. It speaks specifically to the DecisionPoint

3 application, and the document I take that from isn't

4 provided there. I can't remember the name of the -- the

5 organization that provided that estimate. Perhaps Duff &

6 Phelps.

7 Q. And we've had testimony about that earlier, about Duff,

8 D-U-F-F, and Phelps evaluation?

9 A. Yes.

10 Q. And I should have asked, going back a couple slides, it

11 said, for CSI Express, the same Duff & Phelps evaluation,

12 it set the cost to purchase or develop CSI Express at

13 between 25 and 40 million?

14 A. It does say that.

15 Q. Let's go to Evolution Canada, another policy

16 administration system. Using the same approach, tell us

17 the significance that you gleaned, discerned, from the

18 documents of the defendants regarding Evolution Canada.

19 A. Evolution Canada is the policy administration system

20 executing the "bind, book, issue" process for the country

21 of Canada. Evolution is a little bit unique in that it is

22 processing both personal lines, commercial lines and

23 specialty lines; whereas, CSI Express is processing no

24 personal lines. Okay?

25 The primary thing I noted in Evolution is that

1 of use in the country of Australia. And I saw that that

2 did not happen because as they started the deployment

3 process, Blaze Advisor in that was replaced by the IBM

4 product ODM.

5 Q. Okay. As originally received in Australia, the Blaze

6 Advisor software was in the Evolution application?

7 A. The documents do indicate that.

8 Q. Now let's go to EZER, European Zone Executive Risk,

9 another policy administration system --

10 A. Yes.

11 Q. -- correct?

12 And what did you find to be significant and

13 meaningful regarding the use of Blaze Advisor for this

14 application?

15 A. So, again, EZER takes on a little bit different flavor.

16 This application is very similar to the functions performed

17 by CSI Express with the combination of Commercial

18 Underwriter Workstation. Blaze Advisor is used in it for

19 transactional processing, but primarily in terms of giving

20 underwriting guidance. It does have the automated renewal

21 capability to categorize into the -- into the three

22 categories.

23 Q. Okay.

24 A. And it does use Blaze 7.1.

25 Q. And then the -- the underwriting element of it is -- is

**1511****1513**

1 the Automated Renewal Processing is -- is up there in that

2 system, deployed into that system as well. So it's going

3 through the process of, okay, here comes a renewal. I

4 believe Mr. Pandey's definition of the renewal window was

5 90 days. So 90 days in advance, look at the risk

6 characteristics. Is it high touch? Is it medium touch?

7 Is it low touch?

8 Q. Okay. And did you see from the documents of the

9 defendants that in Canada they were able to achieve an 82

10 percent of the renewals at no touch?

11 A. I did -- I did see that stated in the documentation.

12 It was a Duff & Phelps document.

13 Q. And in Canada for Evolution, it uses both .net and

14 dot -- I'm sorry -- .net and Java architecture. That was

15 in the documentation as well?

16 A. Yes.

17 Q. And you have on a slide version 7.1 is the Blaze

18 Advisor being used?

19 A. I do.

20 Q. Okay. Let's go to Evolution Australia. What did you

21 see in the documentations of the -- documentation of the

22 defendants regarding Evolution Australia?

23 A. The documents indicate that the intent was to take the

24 Evolution policy administration system from Canada and

25 transport it to Australia to be the policy administration

1 the underwriting element of it supporting the quotation,

2 binding, renewal, endorsement, cancellation, reinstatement,

3 document generation, reporting, that's all -- I'm sorry.

4 When we speak of a policy administration system, we're

5 speaking of a system that supports quotation, binding,

6 renewal, endorsement, cancellation, reinstatement, document

7 generation and reporting, right?

8 A. Correct.

9 Q. We go to Adapt Europe and Australia, did you see that

10 Adapt was used in both of those geographical areas?

11 A. I did.

12 Q. And so we can -- we can -- but we can speak of the

13 application together. The application did the same thing

14 in each of the geographical areas?

15 A. Correct.

16 Q. So from your review of the documents of the defendants,

17 what was significant about the use of Blaze Advisor in

18 Adapt?

19 A. Let me start by saying, this is the first demonstration

20 outside of the property and casualty universe. This is

21 actually -- Adapt is the policy administration for a life

22 health product called Accident Benefit Life. In the

23 document you will see it referred to as ABL. But in Adapt,

24 Adapt is managing the "bind, book, issue" process and the

25 transactional streams that you would expect a policy

**1514****1516**

1 administration system to manage.  
 2 And Adapt is using version 7.1.  
 3 Q. Okay.  
 4 A. I'm sorry. I am wrong. I think Adapt was a different  
 5 version number. No, I'm incorrect again. 7.1.  
 6 Q. All right. And did Adapt support using Blaze Advisor  
 7 straight-through, no-touch processing, real-time, bind and  
 8 issue, back-end administration, automation, document  
 9 generation and electronic filing?  
 10 A. It did.  
 11 Q. Going to Cornerstone, another policy administration  
 12 system. You mentioned that Cornerstone supported the Chubb  
 13 surety line of business?  
 14 A. Correct.  
 15 Q. To be distinguished from the specialty line of  
 16 business?  
 17 A. Correct.  
 18 Q. And as a policy administration system, did Cornerstone  
 19 support the "bind, book, issue" process for those kinds of  
 20 products?  
 21 A. It did.  
 22 Q. Is there more -- you're telling us that it was using  
 23 version 7.1 of Blaze Advisor. Is there any more  
 24 significance in your analysis regarding Cornerstone that we  
 25 haven't spoken to?

1 Texas Accident Prevention Systems?  
 2 A. This is a compliance use simply to meet a statutory  
 3 requirement by the great state of Texas for specific types  
 4 of workers' compensation policies.  
 5 Q. Okay. And individual rate modification, pricing rules,  
 6 would you describe that if you haven't -- well, you did  
 7 some.  
 8 A. I did some. My description now will not be radically  
 9 different. Individual rate modification used with certain  
 10 commercial and specialty types of products is a mechanism  
 11 to give pricing flexibility to the underwriter in the  
 12 pricing of the policy.  
 13 And individual rate modification, if you will  
 14 allow me to use the term "guardrails," the top of the range  
 15 is a guardrail, the bottom of the range is a guardrail, and  
 16 the job of IRMA is to make sure that nothing -- nothing  
 17 crashes through the guardrails.  
 18 Q. Stay within the guardrails?  
 19 A. Stay within the guardrails.  
 20 Q. So now we will -- we will turn to Premium Booking  
 21 modernization. I want to go forward on a slide here  
 22 because you spoke, I think, of this element of the PARS  
 23 modernization and resulting in the Premium Booking  
 24 application.  
 25 From the defendants' documents, could you

**1515****1517**

1 A. The only other point I would make is, it was used to  
 2 optimize and manage workflow.  
 3 Q. And could you explain that, please?  
 4 A. Routing of work to the appropriate party, very similar  
 5 to the Inventory Management aspect of CUW.  
 6 Q. Okay. Understood. Thank you.  
 7 Let's move to what are called the compliance  
 8 applications.  
 9 A. Certainly.  
 10 Q. And in your review, Blaze Advisor was used in three  
 11 compliance applications.  
 12 A. That is correct.  
 13 Q. And the slide here identifies them as Premium Booking,  
 14 we've spoken some about; Texas Accident Prevention Systems,  
 15 TAPS; and Individual Rate Modification, IRMA?  
 16 A. Correct.  
 17 Q. All of those have been identified -- we've mentioned  
 18 them each, so let's just go through each one individually.  
 19 Premium Booking modernization, the Blaze Advisor  
 20 function was -- was what?  
 21 A. Validation of the rules for the Premium Activity  
 22 Reporting System. You will see this Premium Activity  
 23 Reporting System referred to as PARS, P-A-R-S.  
 24 Q. When we discuss that application in its individual way,  
 25 we will look at that in some more detail.

1 describe what that image is showing?  
 2 A. This image is not technology-specific. This is a  
 3 business view of what has to happen. So when an insurance  
 4 company issues -- well, binds a policy, okay? So the --  
 5 figuratively speaking, the bind button has been pushed, the  
 6 quote has been accepted, the renewal offer has been  
 7 accepted, there are a number of things that need to happen.  
 8 Because we are a highly regulated industry, 51  
 9 jurisdictions, information has to go to multiple places.  
 10 One of those places is going to be statistical reporting.  
 11 So we -- we watched a testimony deposition, and I  
 12 have already forgotten this gentleman's name, but in his  
 13 title he used statutory reporting. Statutory reporting is  
 14 just simply the insurance company sending to the  
 15 appropriate regulatory bodies information about policies.  
 16 Okay?  
 17 In statutory reporting, a policy is just not one  
 18 set of data. So if I go back to that commercial fire  
 19 policy that I talked about, a commercial fire policy has  
 20 fire coverage. I'm sure that's a big surprise, right? But  
 21 that fire -- that fire coverage, it has a coverage code,  
 22 and part of the total policy premium is attributed to that  
 23 code. And then that information, through a booking  
 24 process, in this case PARS, improved upon by Blaze Advisor  
 25 through a project called Premium Booking Modernization is

**1518****1520**

1 now feeding that information.

2 Well, I can tell you there is a code there for

3 lightning, and a premium would be associated to lightning.

4 There is a code there for wind and hail, and it will be

5 associated to hail. I won't bore you with all 17 or 18 of

6 those coverages, but that's what happens.

7 Q. Okay.

8 A. And it is important because it is statutorily required,

9 okay?

10 The nice thing about -- the nice thing about this

11 chart is it shows you how many places a premium has to go

12 after that booking has been executed. And if you look at

13 this chart, it's got to go to one, so daily premium and

14 loss control. It's got to go to billing. It's got to go

15 to actuarial bureau reporting. Those are -- actuarial

16 bureau reporting means data aggregators for the industry --

17 I'm sorry. It's a statutory requirement. There are

18 companies that aggregate data for the insurance industry,

19 and companies contribute to them. The NAIC is a good

20 example of that.

21 So then -- we've got three places the data has

22 got to go now. We are going to go to a fourth -- it's

23 going to send information to the policy -- I'm sorry, to

24 the CIS Claims -- speaking specifically to CIS, it's going

25 to send policy to claims because the claims department

1 opportunity you spoke about?

2 A. That is correct. Think about it not in terms of that

3 specific opportunity, but if you have a new opportunity in

4 front of you -- it might be aviation insurance. It might

5 be automobile manufacturers. At the end of the day, to

6 bring that product to market, in addition to all of the

7 work I talked about in the product management function and

8 the information technology function, you've got to be able

9 to book and report to the statutory authorities about that

10 premium. That's what this is.

11 Q. Okay. And now we turn to this slide. It is about

12 Premium Booking modernization. It may be that we have

13 spoken about it. I think so. This was another -- this

14 also used Blaze Advisor version 7.1?

15 A. Correct.

16 Q. All right. Let's go to Texas Accident Prevention

17 Systems. Oops. And we have these bullet points of yours.

18 We've described it already as relating to workers' comp in

19 Texas. This application used version 7.1 of Blaze Advisor?

20 A. Correct.

21 Q. Okay. Unless you see something that we haven't spoken

22 about on Texas Accident Prevention Systems, I'm ready to

23 move on.

24 A. I will only say one sentence additional, if allowed.

25 Q. Yeah.

**1519****1521**

1 might get a phone call that says, hey, I'm X; I've got a

2 claim. The first thing they are going to do is they're

3 going to confirm that the policy exists.

4 Q. Slow down.

5 A. I'm sorry. So CIS Claims is going to get a phone call

6 about a claim. They need to confirm that the policy is

7 active, that data transfer to claims allows that to be

8 done.

9 Q. Okay.

10 A. Then you come down to -- then you come down to profit,

11 and you notice that there are three sub-boxes under that.

12 So data has got to go to those three boxes. So if you add

13 all those boxes up, one, two, three, four, five, six, there

14 are seven places that data has got to be sent. There has

15 to be something that manages that sending. At the

16 defendant, that something is named Premium Activity

17 Recording System, and it is that system that was modernized

18 using Blaze Advisor 7.1.

19 Q. And that then is the Premium Booking application?

20 A. As defined by the defendants' documents, yes.

21 Q. And by modernizing this process resulting in the

22 Premium Booking application, is this the instance where,

23 because all that back-end -- all that back-end reporting

24 was done using Blaze Advisor and much faster, they were

25 able to capture the market -- the 25 million dollar market

1 A. This is a use of Blaze Advisor to fulfill a statutory

2 reporting requirement. It's not participating at this

3 point with anything with the "bind, book, issue." It's

4 just saying, hey, this is a policy. Here are the state

5 requirements. Read it.

6 Q. And hence, we put it in the compliance category?

7 A. Correct. And I'm sure that any insurance company would

8 prefer not to be slapped on the wrist and fined for not

9 complying with the requirement.

10 Q. Okay. Then let's go to IRMA. And have we spoken about

11 this in terms of the guardrails?

12 A. Yes.

13 Q. It used Blaze Advisor version 7.1, from your review?

14 A. Yes.

15 Q. I think maybe we've spoken about each of the bullet

16 points on this slide. Do you agree?

17 A. I agree.

18 Q. Okay. Then let's go to the utility applications, and

19 we didn't define that before. So what do you mean by

20 utility application?

21 A. They are applications that are deployed to make

22 people's lives easier but specifically as it relates to the

23 "bind, book, issue" process of selling insurance.

24 Q. But it does -- does it --

25 A. I'm sorry?

1522

1524

1 Q. Do these utility applications -- although not being  
 2 policy administration systems, do they connect to the  
 3 selling of insurance?  
 4 A. Absolutely.  
 5 Q. So at the defendants' utility applications were  
 6 commercial -- are these the utility applications at the  
 7 defendants?  
 8 A. Yes.  
 9 Q. We have spoken about CUW-IM, Broker Site in Canada. We  
 10 will speak more about Exari in Europe. We haven't really  
 11 addressed that. And we've talked about CIS Claims.  
 12 So the Blaze Advisor function at Commercial  
 13 Underwriter Workstation. That is what it was?  
 14 A. Yes.  
 15 Q. And I think we're spoken about that.  
 16 A. I agree.  
 17 Q. Okay. And then Brokersite, we haven't really spoken  
 18 about that, client information access portal for brokers.  
 19 How did Brokersite use the Blaze Advisor function?  
 20 A. It is a tool made available to the independent agents  
 21 and brokers to discover information about their  
 22 policyholders. So if -- using a very, very simple example,  
 23 if the business calls the independent agent and broker and  
 24 says, when is my next premium due? In this deployment and  
 25 in this function, the independent agent would go to the

1 your review of the documents, was it used by 6,000 users in  
 2 the United States and Canada?  
 3 A. Based on the documents, yes.  
 4 Q. You had the bullet point, If CUW Inventory Management  
 5 is down and work orders cannot be created or reviewed, what  
 6 did you see from the documents that was the consequence of  
 7 CUW-IM being down?  
 8 A. I believe the direct words of the document, and I  
 9 believe it here is the -- there was little to no "bind" --  
 10 "bind, book, issue" taking place. This is the deployment  
 11 to -- for inventory management, and so inventory management  
 12 makes sure that any individual participant in the  
 13 underwriting process, it makes sure that their in-box does  
 14 not -- in-box of "bind, book, issue," in-box of any other  
 15 type of underwriting work, be it underwriting endorsements  
 16 or underwriting renewals, it's making sure that's what's in  
 17 their in-box is within their defined capacity. And if it  
 18 does not, taking that work and getting it into some other  
 19 similar skill set person whose in-box can absorb the work.  
 20 Q. And if that can't be done, then the work doesn't get  
 21 done?  
 22 A. If that can't be done, the work doesn't get done.  
 23 Q. You have here that commercial -- Chubb Commercial  
 24 Insurance processes over 5 billion dollars worth of  
 25 business with CUW-IM?

1523

1525

1 Brokersite, look up that policy and say, oh, look, you have  
 2 a thousand books due on August the 1st.  
 3 Q. This is an ease of doing business benefit?  
 4 A. Correct.  
 5 Q. Exari, data capture and document generation. What was  
 6 that?  
 7 A. Exari never deployed into production but built using  
 8 Blaze Advisor, is a use of Blaze Advisor to create an  
 9 interview tool to walk someone through an interview  
 10 process, an agent and broker, or potentially a customer,  
 11 asking them questions, and then the application Exari is  
 12 going to fill out paperwork based on those answers.  
 13 Q. For the purpose of selling the insurance policy?  
 14 A. Agreed.  
 15 Q. And then CIS Claims, claims categorization, I think I  
 16 could use a little better understanding of what that means.  
 17 A. CIS Claims is the predictive modeling use that looks  
 18 back at information and says, did we get the price right?  
 19 So when you think about categorization, really, there are a  
 20 couple, right? There is, I got it right, or I didn't get  
 21 it right, and if I didn't get it right, I missed by --  
 22 Q. Okay. Got it. Understood.  
 23 Now let's go through each of them in a little  
 24 more detail. Commercial Underwriting Workstation Inventory  
 25 Management, this -- in terms of these bullet points, from

1 A. It does.  
 2 Q. Is that on an annual basis or what time frame?  
 3 A. No. That is annually.  
 4 Q. You also have on here that there were 1.22 million  
 5 transactions per month. That was CUW-IM?  
 6 A. Correct.  
 7 Q. And some of these other bullet points we've spoken to,  
 8 it uses Blaze Advisor 7.1?  
 9 A. It does.  
 10 Q. And then you have the estimated cost to purchase or  
 11 redevelop CUW at between 5 and 10 million dollars?  
 12 A. Yes. That's from the same data source as before.  
 13 Q. Same data source as before, this Duff & Phelps?  
 14 A. Correct.  
 15 Q. Let's go to Brokersite. We've spoken about it a bit.  
 16 So the interface between Brokersite and Evolution was what,  
 17 as you saw from the documents?  
 18 A. The Blaze Advisor is used in Brokersite.  
 19 Q. Mm-hmm (Yes).  
 20 A. And it participates in that -- in that interface. And  
 21 as I mentioned before, Brokersite's job is to get  
 22 information back to the agent and the broker as it relates  
 23 a specific policy, suite of policies, customer.  
 24 Q. And as you've already said, the Canadian application  
 25 called Evolution used Blaze Advisor?

**1526****1528**

1 A. Yes.

2 Q. Now let's go to Exari. We haven't heard much about

3 that. You identified it a moment ago as the

4 document-authoring. What did you see from the -- it's a

5 document-authoring application.

6 Tell us what you learned from the defendants'

7 documents regarding Exari and its use of Blaze Advisor?

8 A. It was designed to be used with EZER, which I will

9 refresh your memories. That is the European executive risk

10 policy administration system. It was the -- through most

11 of the software development life cycle and 30 days before

12 moving to its scheduled move to production date, it was

13 tabled and put on the shelf.

14 Q. Okay. You have on that slide that the development of

15 Exari began in 2013?

16 A. I do.

17 Q. And that's from the documents of the defendants?

18 A. Yes.

19 Q. And then the date on which it was put on the shelf, in

20 your words, was January 27, 2016?

21 A. Yes, again from defendant documents.

22 Q. You have Blaze Advisor version 7.1?

23 A. Correct.

24 Q. Okay. CIS Claims. We've spoken about it already as a

25 predictive analytic application. Maybe you can describe

1 written into Blaze Advisor, it gets written there?

2 A. It comes back to the deployment of the rules. In this

3 case, in Blaze Advisor.

4 Q. And this used version 7.1?

5 A. Correct.

6 Q. So we've gone through the insurance industry, the

7 process of selling insurance, the applications that use

8 Blaze Advisor, all of your analysis of what they did and

9 why, and the defendants' documents. Let's use this slide

10 to summarize your overall view.

11 A. My overall view from a time frame of defendants' use of

12 Blaze Advisor begins in 2006 midyear with the -- with the

13 RFI that says, we've got a corporate growth strategy that

14 now involves a tactic of moving to small and mid-market

15 specialty, and we have -- we recognize that that results in

16 increased transactional volume, which as staffed today, we

17 can't handle. In addition, our systems are not really

18 built for this segment of the market. And, oh, by the way,

19 we have a corporate expense strategy that will not allow us

20 to increase staff, so we need to find a way to do this

21 within our existing staff.

22 We that with that RFI, there were a series of

23 events that took place. Some of them referenced in other

24 testimonies that I have not seen those documents, but I

25 have seen the ultimate license agreement that comes out of

**1527****1529**

1 how actuaries used this information and its relationship to

2 CSI Express?

3 A. CSI Express is a very large application. It has a

4 policy administration component. It has a claims

5 component. Excuse me. Both of those components have

6 information that the actuarial department needs, as I

7 pointed out in the Premium Booking business slide.

8 Q. Yeah.

9 A. So what is going to happen is, periodically, CIS Claims

10 is going to take that information, policy claims, and it's

11 going to go through a predictive modeling process that --

12 as I said before, it just basically determines, is this

13 price right, or is this price not right and provide -- when

14 the answer is "not right," provide insight for reasons as

15 to why they now consider it not right.

16 Q. And that's the actuarial element of it?

17 A. Yes, that is the actuarial element of pursuing the

18 adequate accurate predictable price.

19 Q. And then the ultimate result of that analysis, that

20 actuarial analysis, how is that then used?

21 A. It's going to go back to the corporate underwriting

22 product management function, who will then use that to take

23 it into their underwriting guidelines and standards

24 definitions and potentially pricing definitions.

25 Q. I'm sorry. And then if the underwriting guidelines are

1 that. Blaze Advisor was licensed to be a technical

2 capability applied to the execution of those tactics.

3 Right?

4 Blaze Advisor was deployed initially through

5 ARP-1 and 2. That, according to the documents, was a

6 success, and so then they started to -- to do two things.

7 Number one is expand the use of Blaze Advisor. I believe

8 predictive modeling now came onto the table pretty quickly.

9 But they also went through an internal marketing process to

10 improve the knowledge of concepts of business rules

11 management and decision management in other parts of the

12 organization.

13 Q. Okay. And then on this slide we show the applications

14 that were -- all of the applications that ultimately used

15 Blaze Advisor?

16 A. These are all of the uses of Blaze Advisor.

17 Q. That we have just gone through.

18 And then were you able -- in your judgment, what

19 was the extent of -- in your judgment, what was the value

20 that the defendants realized using Blaze Advisor in selling

21 insurance?

22 A. So when I talk about the value, I go back to the quote,

23 "buying, book, issue process." Can I make things faster?

24 Can I make them more consistent? Can I be more agile as it

25 respects to the opportunity in the marketplace and to



**1530****1532**

1 responding to statutory and regulatory changes? Can I stay  
 2 more in compliance with both those statutory and those  
 3 underwriting -- corporate underwriting requirements? Can I  
 4 be easier to do business with? Can I take on -- can I  
 5 scale? Can I take on more business with my existing very,  
 6 very valuable staff?  
 7 And if I do that, take on more business with my  
 8 valuable staff, but I reduce the amount of use of human  
 9 capital in the "buying, book process," I can now  
 10 concentrate on agents and brokers and spending time with  
 11 them in developing that relationship, my conclusion is that  
 12 Blaze Advisor deployed by agents in some places, not all,  
 13 added significant value to the defendants' business of  
 14 selling insurance.  
 15 Q. Okay. And in drawing this judgment about the  
 16 significant value of selling insurance, do I understand you  
 17 correctly that the attributes or the features that resulted  
 18 in the significant value were the ones you just described:  
 19 Speed, agility, precision and so forth?  
 20 A. That is correct.  
 21 Q. Did you have -- we saw in some of the slides of the  
 22 defendants where some other insurance companies had done  
 23 the work to quantify or measure the improvements that they  
 24 realized with Blaze Advisor.  
 25 Did you have that -- any kind of information like

1 "bind, book, issue" which is how I describe the process of  
 2 selling insurance where deployed.  
 3 MR. HINDERAKER: Thank you for your time.  
 4 THE WITNESS: You're welcome.  
 5 THE COURT: Ms. Godesky.  
 6 MS. GODESKY: Thank you.  
 7 THE WITNESS: Thank you. I'm overburdened here.  
 8 CROSS EXAMINATION  
 9 BY MS. GODESKY:  
 10 Q. Good morning, Mr. Whitener.  
 11 A. Good morning, Ms. Godesky.  
 12 Q. You understand I represent the defendants in this case,  
 13 right?  
 14 A. I do, in fact.  
 15 Q. This is your first time testifying as an expert in  
 16 court, right?  
 17 A. That is correct.  
 18 Q. So no court or arbitrator has ever qualified you as an  
 19 expert in rules-based software?  
 20 A. This is correct.  
 21 Q. Your advanced degree is a college degree from Virginia  
 22 Commonwealth University where you majored in education,  
 23 correct?  
 24 A. I have a degree in education, a Bachelor of Science  
 25 from Virginia Commonwealth University. I struggle with the

**1531****1533**

1 that available to you?  
 2 A. I did not.  
 3 Q. Is it necessary for you to have that kind of  
 4 quantification of information to draw your judgment that  
 5 Blaze Advisor added significant value?  
 6 A. There are two different questions there in the  
 7 underwriting world I live in. The first is, did it? The  
 8 second is, how much did it? Okay? I had more than enough  
 9 information, documentation, 10,000-plus pages, to determine  
 10 that it did it.  
 11 I don't need a tape measurer or a stopwatch to  
 12 know that computers executing transactions is faster than  
 13 humans because I was a human underwriter, and I've worked  
 14 with many companies to -- to deploy technology into those  
 15 processes. I don't know -- I don't need to measure  
 16 variation in compliance because I know a computer system  
 17 with a set of facts is going to make the same decision with  
 18 those facts every time, and I know -- I have been out on  
 19 underwriting audits and audited underwriting functions --  
 20 that humans cannot do that.  
 21 Q. So overall as a -- overall, Blaze Advisor added  
 22 significant value in the selling of insurance by the  
 23 defendants?  
 24 A. My opinion is that Blaze Advisor added significant  
 25 value to the -- to the defendants' process of executing the

1 word "advanced."  
 2 Q. It's a degree in education from Virginia Commonwealth,  
 3 right?  
 4 A. That is correct.  
 5 Q. You've never worked for a software company, correct?  
 6 A. Correct.  
 7 Q. And you've never worked as a software developer,  
 8 correct?  
 9 A. Mostly correct -- well, no. I'm sorry. Correct.  
 10 Q. During direct examination beginning of yesterday, you  
 11 talked about the work you've done at various insurance  
 12 companies, right?  
 13 A. Various insurance companies and various vendors who  
 14 sell goods and services to the insurance companies.  
 15 Q. Okay. So I want to walk through the chronology of your  
 16 employment that Mr. Hinderaker took you through and asked  
 17 you a few different questions.  
 18 So you were at the Hartford, which is an  
 19 insurance company, from the late 1970s to the early 1990s?  
 20 A. Mid-1993.  
 21 Q. Okay. And you did not do any work with decision  
 22 management software at that job because the software did  
 23 not exist in that time period, correct?  
 24 A. Correct.  
 25 Q. And then you were at the Prudential, which is another



**1546****1548**

1 examination how the country's largest insurance companies  
 2 are using rules-based software as opposed to coding by  
 3 software engineers, right?  
 4 A. Correct.  
 5 Q. You also haven't conducted any survey of FICO's  
 6 customers regarding their experience with Blaze, right?  
 7 A. Correct.  
 8 Q. And you haven't spoken to other rules software vendors  
 9 about their software programs, correct?  
 10 A. Mostly correct.  
 11 Q. Now, Mr. Whitener, as a general baseline, based on your  
 12 direct testimony, I'm assuming we can agree that the  
 13 insurance business is complex, right?  
 14 A. I have described it that way before. There are aspects  
 15 that are very, very simple, but generally speaking, it is a  
 16 complex industry.  
 17 Q. Okay. And I want to talk about some of the factors  
 18 that drive an insurance company's ability to earn revenue,  
 19 okay? So the relationship between a broker and an agent,  
 20 on one hand, and the insurance company on the other, that  
 21 can affect where customers want to buy their insurance,  
 22 right?  
 23 A. Yes.  
 24 Q. And Blaze doesn't have anything to do with the  
 25 interpersonal relationships that Chubb employees build with

1 A. I would say that different, but it is an important  
 2 factor.  
 3 Q. And Blaze has no role in Chubb's billing process,  
 4 right?  
 5 A. I saw no documentation that indicated that.  
 6 Q. Meaning you haven't seen anything connecting Blaze to  
 7 billing?  
 8 A. Correct.  
 9 Q. It's also very important that an insurance company have  
 10 a strong process for handling claims once they come in,  
 11 right?  
 12 A. Correct.  
 13 Q. And that's because brokers and agents aren't going to  
 14 have any desire to sell policies on behalf of insurance  
 15 companies that's not efficiently handling claims, right?  
 16 A. Correct.  
 17 Q. And it's important that an insurance company pays the  
 18 right amount of money when a claim comes in, and they do so  
 19 pretty fast?  
 20 A. I'm going to say it slightly differently. It is  
 21 important that insurance companies pay the right amount,  
 22 and it's important that they get that right amount to the  
 23 policyholder quickly.  
 24 Q. And Blaze, I think as you said during your direct  
 25 examination, was not used in the claims handling side of

**1547****1549**

1 brokers and agents, right?  
 2 A. Mostly correct.  
 3 Q. Blaze isn't taking people out to the ball game or out  
 4 to dinner or a networking lunch, right?  
 5 A. Correct.  
 6 Q. And the insurance products that a company sells are  
 7 also part of what determines the success of an insurance  
 8 company, right?  
 9 A. Yes.  
 10 Q. Can be a meaningful contributor to what makes a company  
 11 successful, right?  
 12 A. Without products, there is no revenue, correct.  
 13 Q. And insurance products are developed based on the  
 14 expertise of the insurance company and the know-how of the  
 15 people who work there, correct?  
 16 A. In combination with statutory requirements of the  
 17 states in which they decided to do business and the state  
 18 requirements for the products they decided.  
 19 Q. Fair enough. And you have not identified any  
 20 particular insurance product that was specifically  
 21 developed at Chubb because of Blaze, right?  
 22 A. Correct.  
 23 Q. An error-free billing process is also an important  
 24 factor in attracting customers to an insurance company,  
 25 right?

1 Chubb at all, right?  
 2 A. Correct.  
 3 Q. Underwriting is another aspect of how insurance  
 4 companies make money. You were an underwriter, right?  
 5 A. I was, yes.  
 6 Q. And from your experience as an underwriter, you know  
 7 that your personal human judgment is crucial to the  
 8 performance and execution of your duties as an underwriter,  
 9 right?  
 10 A. I'm not sure I agree with it.  
 11 Q. Okay. Let's look at your deposition transcript at page  
 12 47.  
 13 A. Certainly.  
 14 Q. And if I could direct you to page 47, line 7. Let me  
 15 know when you're there.  
 16 A. Patience, counselor.  
 17 I'm there.  
 18 Q. You were asked at your deposition "Question: Your  
 19 personal judgment was crucial in the performance of your  
 20 underwriting duties, correct?"  
 21 "Answer: Yes."  
 22 That was your testimony at your deposition,  
 23 right?  
 24 A. Yes.  
 25 Q. Your emotional quotient or your emotional intelligence

**1562****1564**

1 Q. Mr. Whitener, during direct examination, you walked us  
 2 through all the computer applications that you say use  
 3 Blaze, right?  
 4 A. Yes.  
 5 Q. You have never used any of those computer applications?  
 6 A. Correct.  
 7 Q. Let's start with CSI Express. CSI Express is a policy  
 8 administration system, right?  
 9 A. It is.  
 10 Q. And like pretty much every policy administration  
 11 system, it's complex, correct?  
 12 A. Correct.  
 13 Q. It involves many different technologies?  
 14 A. It does.  
 15 Q. But before you rendered all your opinions in this case  
 16 about the value of Blaze and CSI Express, you didn't do  
 17 anything to measure how significant a part of CSI Express  
 18 Blaze is, right?  
 19 A. Yes.  
 20 Q. You have not done any analysis of what amount of  
 21 improvement to speed, ease of doing business or adequacy of  
 22 pricing is attributable to Blaze in CSI Express as opposed  
 23 to the application as a whole, correct?  
 24 A. Correct.  
 25 Q. That was outside the scope of the responsibilities you

1 Q. Mr. Whitener, before rendering all your opinions in  
 2 this case, you gave zero thought to whether you could have  
 3 measured all this contribution to speed that you say is  
 4 attributable to Blaze, correct?  
 5 A. Zero?  
 6 Q. Zero. Sound right?  
 7 A. No. I took zero action based on those thoughts.  
 8 Q. Let's look at your deposition page 153.  
 9 A. I'm there.  
 10 Q. Line 19. "Question: In your mind, would it be even  
 11 possible to measure the contribution that Blaze has to the  
 12 speed that you've discussed CSI Express creating?  
 13 "Answer: Having had the privilege of giving that  
 14 question zero thought, I can't answer it."  
 15 That's the testimony you gave, correct?  
 16 A. It is.  
 17 Q. Let's talk about Profitability Indicator. That's  
 18 another application you talked about, correct?  
 19 A. Correct.  
 20 Q. And you said it increased speed relating to renewals in  
 21 response to requests for quotes, correct?  
 22 A. I'm sorry. Repeat that.  
 23 Q. You talked about how it increases speed because of  
 24 Blaze, right?  
 25 A. I did.

**1563****1565**

1 had in this case, right?  
 2 A. Correct.  
 3 Q. In fact, before rendering expert opinions in this case,  
 4 you spent less than one second reviewing the components of  
 5 CSI Express that had nothing to do with Blaze, correct?  
 6 A. Correct.  
 7 Q. And you spoke a lot on direct examination about how  
 8 Blaze must have brought speed to CSI Express, but you  
 9 haven't done any work to try to determine whether you're  
 10 talking about one day, two days or hours, right?  
 11 A. You are correct.  
 12 Q. You didn't look at that.  
 13 A. Correct.  
 14 Q. And also in the context of CSI Express, you do not know  
 15 whether CSI Express actually increased the speed of  
 16 response to requests for quotes at Chubb, right?  
 17 A. Yes, but --  
 18 Q. You do not know, right, Mr. Whitener?  
 19 A. Yes.  
 20 Q. You don't know.  
 21 A. Yes.  
 22 Q. And you do not know whether the speed of making renewal  
 23 offers through CSI Express was actually increased because  
 24 of Blaze. You cannot say that, right?  
 25 A. I cannot say how much. I can say I believe it was.

1 Q. And Profitability Indicator is part of the CSI Express  
 2 application?  
 3 A. It is.  
 4 Q. Counted as a separate application on your direct  
 5 examination, but it's part of CSI Express, right?  
 6 A. It is an additional application deployed inside of CSI  
 7 Express.  
 8 Q. And you don't know whether Profitability Indicator,  
 9 including Blaze, actually contributed to increased  
 10 revenues, right?  
 11 A. Excuse me. I didn't -- yes, I did not measure  
 12 anything.  
 13 Q. Let's move on to DecisionPoint. You talked about all  
 14 of the value that Blaze brought to DecisionPoint during  
 15 your direct examination, right?  
 16 A. Yes.  
 17 Q. And DecisionPoint, just like Profitability Indicator,  
 18 is part of CSI Express, correct?  
 19 A. Yes.  
 20 Q. You're sort of counting it separately on your slides,  
 21 right?  
 22 A. Yes.  
 23 Q. You don't know whether DecisionPoint actually  
 24 contributed to revenue at Chubb, correct?  
 25 A. Yes, but --

**1566****1568**

1 Q. It's correct, right, Mr. Whitener?

2 A. Yes.

3 Q. Next up was Evolution. Based on your review of the

4 record in this case, you agree that Evolution uses many

5 different technologies in addition to Blaze, right?

6 A. Yes.

7 Q. And you do not know whether the speed of response to

8 quotes or requests for renewal were actually increasing

9 because of Blaze, right?

10 A. Yes, but -- yes.

11 Q. You don't know?

12 A. Yes.

13 Q. And you haven't done anything to determine whether the

14 use of Blaze in Evolution actually improved the

15 availability of underwriting, correct?

16 A. Correct.

17 Q. Then you talked about Adapt. Adapt is a policy

18 administration system, right?

19 A. It is.

20 Q. It is complex, correct?

21 A. Yes.

22 Q. And you cannot say whether any of the benefits that you

23 talked about on direct examination with Mr. Hinderaker were

24 actually realized by Chubb, correct?

25 A. Correct.

1 A. Correct.

2 Q. And you haven't done any analysis to determine whether

3 Blaze's incorporation in Premium Booking meant that Chubb

4 could report data for their new products faster, right?

5 A. Correct.

6 Q. Next was TAPS, the Texas Accident Prevention System.

7 And you are aware that witnesses have testified in this

8 case that the function Blaze performed in TAPS could have

9 just as easily have been performed by an Excel spreadsheet,

10 right?

11 A. Yes.

12 Q. You can't speak to whether or not that's true. You

13 don't know.

14 A. I know that the documents say that.

15 Q. But you agree, it's certainly possible that other

16 software could have been used in TAPS to perform exactly

17 the same function as Blaze, right?

18 A. Yes.

19 Q. And you don't know whether Blaze's inclusion in TAPS is

20 what actually ensured that each policy written in the

21 workers' compensation line of business at Chubb was in

22 compliance with Texas regulations, correct?

23 A. May I ask you to restate?

24 Q. You don't know whether Blaze's inclusion in TAPS is

25 what was actually ensuring that all of these workers' comp

**1567****1569**

1 Q. Cornerstone is another policy administration system for

2 all those surety bonds, right?

3 A. Correct.

4 Q. Also complex.

5 A. Correct.

6 Q. And you don't know whether any of the benefits that you

7 spoke about on direct examination were actually realized by

8 Chubb because of Blaze, correct?

9 A. Yes.

10 Q. Then we have these compliance systems. Premium Booking

11 is one of them, right?

12 A. Yes.

13 Q. That's also in CSI Express, right?

14 A. Yes.

15 Q. And the process underlying the Premium Booking

16 application used at Chubb is complex.

17 A. Yes.

18 Q. But before rendering all your expert opinions about the

19 value of Blaze and Premium Booking, you didn't do anything

20 to investigate what systems and software other than Blaze

21 are used in Premium Booking, correct?

22 A. Correct.

23 Q. And you haven't conducted any analysis to determine

24 whether Premium Booking actually enabled Chubb to bring new

25 products to market faster, right?

1 insurance policies satisfied Texas regulations, correct?

2 A. Correct.

3 Q. Then you talked about IRMA. You have not determined

4 whether IRMA actually contributes to revenue at Chubb by

5 ensuring that quoted and issued policies are compliant,

6 right?

7 A. Correct.

8 Q. Then there was CUW inventory management. That was

9 another application you walked us through, correct?

10 A. Yes.

11 Q. It uses many different technologies, right,

12 Mr. Whitener?

13 A. If you're referring to CUW, that is correct.

14 Q. And you cannot say anything as to whether the inclusion

15 of Blaze in CUW-IM actually accelerated inventory

16 management at Chubb, correct?

17 A. Correct.

18 THE COURT: Ms. Godesky, are you still at a

19 convenient breaking point?

20 MS. GODESKY: Sure.

21 THE COURT: Or --

22 MS. GODESKY: Yeah, it's fine. Thank you.

23 THE COURT: All right. Members of the Jury,

24 we're take our lunchtime recess. Be back in the courtroom

25 at one o'clock.

**1594****1596**

1 Q. So before the lunch break, we were going through all  
 2 the different computer applications at Chubb that used  
 3 Blaze that you talked about with Mr. Hinderaker, right?  
 4 A. Agreed.  
 5 Q. And the next one I want to talk about is Brokersite.  
 6 That is another application that you talked about during  
 7 direct, correct?  
 8 A. Correct.  
 9 Q. And you were in court yesterday, and you've heard  
 10 Mr. Mirollyuz at Chubb testify that Brokersite does not use  
 11 Blaze Advisor, correct?  
 12 A. Correct.  
 13 Q. And you, of course, never worked at Chubb, so you don't  
 14 have a basis to dispute that with your personal knowledge,  
 15 right?  
 16 A. Correct.  
 17 Q. CIS Claims is another application that you talked about  
 18 with Mr. Hinderaker, right?  
 19 A. Correct.  
 20 Q. And even though it's called claims, it is not a claims  
 21 handling application, right?  
 22 A. Correct.  
 23 Q. And you cannot say whether the use of CIS Claims  
 24 contributed to Chubb's revenue, correct?  
 25 A. I disagree.

1 and analyze how they compare to Blaze, correct?  
 2 A. Correct.  
 3 Q. Now, during your questioning with Mr. Hinderaker, you  
 4 talked a bit about other insurance companies making use of  
 5 rules software, right?  
 6 A. I'm sorry. Say that again.  
 7 Q. During your direct examination, you talked a little bit  
 8 about other insurance companies using Blaze.  
 9 A. Yes.  
 10 Q. And if we could pull up, Vanessa, slide 28 from  
 11 Mr. Whitener's PowerPoint.  
 12 This is one of those slides, right, Mr. Whitener?  
 13 A. It is.  
 14 Q. And Mr. Hinderaker showed you this slide during your  
 15 direct and he said, you know, this is internal  
 16 communications at Chubb, right?  
 17 A. Yes.  
 18 Q. He made a point of saying, this was Chubb reporting to  
 19 themselves about use of Blaze at other companies, right?  
 20 A. Yes.  
 21 Q. And do you see at the bottom of this document, there's  
 22 a source listed?  
 23 A. It is.  
 24 Q. Who is the source?  
 25 A. Fair Isaac.

**1595****1597**

1 Q. Let's look at your deposition at page 211.  
 2 A. Bear with me.  
 3 Q. Sure.  
 4 A. I did better this time.  
 5 Q. Your deposition at page 211, line 7. "Question: Do  
 6 you know whether that use of CIS Claims in fact contributes  
 7 to Federal's revenue?  
 8 "Answer: I have done no quantification research,  
 9 nor have I talked with anyone at Federal, Chubb, ACE  
 10 Limited."  
 11 That was your answer at your deposition, correct,  
 12 Mr. Whitener?  
 13 A. Correct.  
 14 Q. Now, Blaze is not the only decision management software  
 15 out there. Alternatives do exist, correct?  
 16 A. Correct.  
 17 Q. And your report identifies ten of them, right?  
 18 A. Approximately, yes.  
 19 Q. And those alternative decision management software  
 20 products could have been used in the computer applications  
 21 at Chubb that we've all been discussing in this trial,  
 22 right?  
 23 A. Yes. I'm sorry. Yes.  
 24 Q. But in forming your opinions in this case, you did not  
 25 look at all at those other decision management softwares

1 Q. And if you go to slide 28, Vanessa, the next slide or  
 2 29.  
 3 There's the continued discussion of how Blaze's  
 4 apparently being used in the P&C industry, right?  
 5 A. Yes.  
 6 Q. And what's the source on that slide?  
 7 A. Fair Isaac.  
 8 Q. And as we discussed earlier, before you rendered your  
 9 expert opinions in this case about the value of Blaze to  
 10 Chubb, you didn't conduct a study of how all these  
 11 insurance companies are using Blaze as compared to having  
 12 software engineers code.  
 13 A. That's correct.  
 14 Q. And you heard, sitting through this trial, that Chubb  
 15 used decision management software in just one percent of  
 16 its 1500 computer applications before the merger, right?  
 17 A. As measured on a number of applications footprint  
 18 basis, yes.  
 19 Q. And they were using software engineers to code the  
 20 rules in all the other applications, right? That's the  
 21 testimony.  
 22 A. I believe so.  
 23 Q. And the decision -- that was a decision that Chubb made  
 24 before the merger, even though it had an enterprise-wide  
 25 license to use Blaze without any limit on the number of

**1598****1600**

1 applications, correct?

2 A. That is my understanding.

3 Q. That's a pretty low rate of adoption, right,

4 Mr. Whitener? One percent? It's pretty low.

5 A. Yes.

6 Q. And then you heard from Mr. Ghislanzoni that at ACE

7 before the merger, ACE had decided to put Blaze into one

8 computer application and then this ODM decision management

9 program in about three applications. You heard him testify

10 about that, right?

11 A. I heard the testimony.

12 Q. So at ACE, another giant insurance company, they're

13 only using rules software in less than one percent of their

14 applications, right?

15 A. Sounds right.

16 Q. And you don't have any basis to disagree with

17 Mr. Ghislanzoni's testimony that ACE didn't see a benefit

18 to using rules software more widely, correct?

19 A. No.

20 Q. And then you also heard Mr. Ghislanzoni explain that at

21 the combined ACE/Chubb entity today, rules software is

22 still used in only one percent of all of their computer

23 applications, right?

24 A. Yes.

25 Q. And you have no basis to disagree with that, correct?

1 that -- the analysis that you did make as opposed to the

2 analysis that you did not make. So let me focus on the

3 analysis that you did make.

4 There were at various times in your answers to

5 the last set of questions where you would say mostly

6 correct, partially correct, yes, but, correct, but.

7 What was the qualification that you were trying

8 to express?

9 MS. GODESKY: Objection.

10 THE COURT: Overruled.

11 THE WITNESS: As I mentioned earlier, in my

12 underwriting thought process, there's a difference between

13 what something does and how much something does something.

14 So when you ask me does it make things faster? Yes. I've

15 been at this for a couple of decades. Okay. Maybe more

16 than a couple decades.

17 And the pursuit of responding to requests for new

18 business and improving that response timing and -- has been

19 a key strategy for 44 years. In fact, I was reading

20 Property Casualty 360 about three weeks ago, and another

21 company whose name escapes me, property casualty insurance

22 company, licensed another software package and in their

23 reasoning they quoted speed.

24 So that's an important thing. And when I go to

25 ease of doing business, I can say the same things. These

**1599****1601**

1 A. None.

2 Q. And unlike Mr. Ghislanzoni and Mr. Pandey, as part of

3 your day-to-day work, you've never spent time analyzing the

4 efficiencies and functionality of rules software versus

5 coding by software engineers, correct?

6 A. In terms of the current technology, that is correct.

7 Q. Now at the end of your examination, we all saw this

8 final summary slide, right, and the final summary slide was

9 Blaze brought value to Chubb.

10 That's the summary of your opinion, correct?

11 A. I believe I added the word "significant" but yes.

12 Q. Significant value. That's the summary of your opinion,

13 right?

14 A. Correct.

15 Q. But you do not know whether Blaze actually contributed

16 to any increase in revenue or profit at Chubb, correct?

17 A. I did -- correct. I did not measure anything.

18 Q. Thank you.

19 I have no further questions.

20 A. Thank you.

21 THE COURT: Mr. Hinderaker, redirect.

22 MR. HINDERAKER: Thank you.

23 REDIRECT EXAMINATION

24 BY MR. HINDERAKER:

25 Q. Mr. Whitener, my purpose is to talk about the analysis

1 are, these are value points that the property casualty

2 insurance company pursues and pursues intentionally. How

3 much they get in terms of deployment of an application,

4 they don't measure it. I haven't measured it.

5 And in all of the documentation I was provided,

6 there was nothing that could speak to any of that.

7 BY MR. HINDERAKER:

8 Q. And, for example, well I'll go back to that, but I want

9 to, I guess, stay on this examination for a moment, this

10 line.

11 And let me bring you to -- you were asked about

12 some stuff on your deposition at page 135. And if you can

13 find page 135, please.

14 MS. GODESKY: Objection.

15 THE COURT: Sustained.

16 BY MR. HINDERAKER:

17 Q. I'd like to -- Ms. Godesky asked you to look at

18 page 135, line 22, to 136, line 6. And she read -- I'd

19 like to read the rest of the testimony.

20 MS. GODESKY: Objection.

21 THE COURT: Sustained. You can ask him the

22 questions.

23 MR. HINDERAKER: Okay.

24 BY MR. HINDERAKER:

25 Q. It's, as you just said, you performed no quantitative

<p style="text-align: right;"><b>1602</b></p> <p>1 analysis, correct?</p> <p>2 A. Correct.</p> <p>3 THE COURT: Mr. -- excuse me a second.</p> <p>4 Mr. Whitener, you cannot be reading from your</p> <p>5 deposition right now.</p> <p>6 THE WITNESS: I'm sorry. I'm sorry.</p> <p>7 BY MR. HINDERAKER:</p> <p>8 Q. You -- in your report and in your opinions, those are</p> <p>9 drawn from, as you started to describe, and in the process</p> <p>10 of drawing your opinions, you did not have the information</p> <p>11 available to quantify, measure, the extent of which Blaze</p> <p>12 Advisor was contributing to the value of selling</p> <p>13 software -- to the value of selling insurance at the</p> <p>14 defendants.</p> <p>15 MS. GODESKY: Objection. Leading.</p> <p>16 THE COURT: Overruled.</p> <p>17 THE WITNESS: That is correct.</p> <p>18 BY MR. HINDERAKER:</p> <p>19 Q. You were forthright about that in your deposition as</p> <p>20 well.</p> <p>21 A. To the best of my ability.</p> <p>22 Q. Now, your -- I'll just represent to you, and it's in</p> <p>23 the book here if you want to check it out. You have a</p> <p>24 reply report in the defendants' binder. And that reply</p> <p>25 report is May 31, 2019.</p>	<p style="text-align: right;"><b>1604</b></p> <p>1 use of Blaze Advisor, did they report that they were able</p> <p>2 to change rules, get products to market faster, because</p> <p>3 rather than spending months doing coding, they could modify</p> <p>4 the rules and days?</p> <p>5 MS. GODESKY: Objection. Leading.</p> <p>6 THE COURT: Sustained.</p> <p>7 BY MR. HINDERAKER:</p> <p>8 Q. What did you see in terms of the speed of being able to</p> <p>9 modify rules from the defendants' documents?</p> <p>10 A. There are several places in the defendant documents</p> <p>11 where the defendant documents give a case study from an</p> <p>12 implementation? DecisionPoint is one. Profitability</p> <p>13 Indicator is another. I believe Premium Booking is</p> <p>14 another, but that's less of a concrete memory.</p> <p>15 In those, there are -- pardon me -- there are</p> <p>16 statements about the reduction in time to modify rules from</p> <p>17 three to four months down to a few days, three to</p> <p>18 four days.</p> <p>19 Q. You were asked a question about Brokersite. Your</p> <p>20 understanding that Brokersite used Blaze Advisor is based</p> <p>21 on what?</p> <p>22 A. The documents I referenced in that slide at the bottom</p> <p>23 as my sources from the defendant documents.</p> <p>24 Q. From the defendant documents. Okay.</p> <p>25 Finally, Mr. Whitener, understanding that you</p>
<p style="text-align: right;"><b>1603</b></p> <p>1 A. Yes.</p> <p>2 Q. I'll represent to you that -- do you recall doing a</p> <p>3 supplemental report in approximately May 2020 that was</p> <p>4 limited to your analysis of the rules repository?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And then of course your original report was, was</p> <p>7 dated April 19, 2019.</p> <p>8 So the fact -- counsel asked you whether you</p> <p>9 reviewed Mr. Ghislanzoni's deposition before you wrote</p> <p>10 these reports.</p> <p>11 A. That is correct. I was asked that.</p> <p>12 Q. You were. And given that his deposition was taken</p> <p>13 after all -- after these two reports were written, it would</p> <p>14 have been impossible for you to do that, correct?</p> <p>15 A. It would have been an exceedingly large challenge</p> <p>16 bordering on the impossible.</p> <p>17 Q. Yes. Well, you can't go into the future.</p> <p>18 The deposition of Mr. Schreiber, Ms. Theberge,</p> <p>19 Ms. Garnes taken in April of 2020, you would not have had</p> <p>20 the opportunity to review those either before your reports</p> <p>21 were written in 2019.</p> <p>22 A. That is also correct.</p> <p>23 Q. You were asked some questions about hard coding. I</p> <p>24 don't need to go over that again, but in your analysis of</p> <p>25 the defendants case specific facts with respect to their</p>	<p style="text-align: right;"><b>1605</b></p> <p>1 are, understanding that you are not an IT professional but</p> <p>2 instead an insurance expert, why are you so confident in</p> <p>3 your opinion that Blaze Advisor added significant value to</p> <p>4 the defendants and their selling of insurance?</p> <p>5 A. With my underwriting background, the fact that I have</p> <p>6 been very heavily involved in the execution of the quote,</p> <p>7 bind, book and issue process, the fact that I have been so</p> <p>8 heavily involved at the corporate underwriting function,</p> <p>9 including several instances where I managed the selection</p> <p>10 of vendors for policy administration systems and billing</p> <p>11 systems for companies, the fact that I've been heavily</p> <p>12 involved in the primary setting for technologists and</p> <p>13 making sure that technologists receive from the business</p> <p>14 units for which I worked the requirements and documentation</p> <p>15 that they needed to increase their probability of success,</p> <p>16 I have seen the value of automating underwriting and</p> <p>17 compliance and statutory rules through use of technology.</p> <p>18 I'm very, very confident in that.</p> <p>19 Q. Thank you for your time.</p> <p>20 A. You are welcome.</p> <p>21 THE COURT: Ms. Godesky, any recross?</p> <p>22 MS. GODESKY: No further questions. Thank you.</p> <p>23 THE COURT: All right. Mr. Whitener, you may</p> <p>24 step down. Thank you.</p> <p>25 (Witness excused.)</p>



<p style="text-align: right;"><b>1606</b></p> <p>1 THE COURT: Mr. Hinderaker, are you ready to call</p> <p>2 your next witness.</p> <p>3 MR. HINDERAKER: I am, Your Honor. William Waid.</p> <p>4 THE COURT: Mr. Waid, come on up here, please.</p> <p>5 If you would raise your right hand.</p> <p>6 <u>N. WILLIAM PAUL WAID,</u></p> <p>7 called on behalf of the plaintiff, was duly sworn, was</p> <p>8 examined and testified as follows:</p> <p>9 THE WITNESS: I do.</p> <p>10 THE COURT: Go ahead and sit down and make sure</p> <p>11 you are speaking into a turned-on microphone and state your</p> <p>12 full name for the record.</p> <p>13 THE WITNESS: N. William Paul Waid.</p> <p>14 <u>DIRECT EXAMINATION</u></p> <p>15 BY MR. HINDERAKER:</p> <p>16 Q. I think I'm getting myself organized. Okay.</p> <p>17 Good afternoon.</p> <p>18 A. Good afternoon.</p> <p>19 Q. Mr. Waid, where do you, where do you reside?</p> <p>20 A. Spring City, Pennsylvania.</p> <p>21 Q. And before that, where have you lived?</p> <p>22 A. I grew up in Oley, Pennsylvania, on a 500-acre dairy</p> <p>23 farm. After college, I moved to Boston, Massachusetts, for</p> <p>24 12 years, after which I moved back to Pennsylvania because</p> <p>25 my parents were getting a little bit older, and I needed to</p>	<p style="text-align: right;"><b>1608</b></p> <p>1 intelligence, more specifically a technique called Expert</p> <p>2 Systems.</p> <p>3 And the project was to take the world renowned</p> <p>4 leader in bridge fatigue investigation, put what they know</p> <p>5 inside a computer so that anybody inspecting a bridge could</p> <p>6 take the knowledge of that expert and apply it. And that</p> <p>7 was my first introduction to artificial intelligence.</p> <p>8 Q. Maybe we should have a laymen's understanding of what</p> <p>9 artificial intelligence is.</p> <p>10 A. That's a bit of a buzz word today.</p> <p>11 It actually started back in the 60s as a research</p> <p>12 project. In the late 80s, when I got involved in it, it</p> <p>13 was just starting to come into the compute world. Compute</p> <p>14 was a little light back then. The principal of artificial</p> <p>15 intelligence is really to get the computer to act like a</p> <p>16 human, to actually be able to have the computer take the</p> <p>17 same knowledge or experience of a human or make the</p> <p>18 decisions of a human.</p> <p>19 Expert System is just one of many techniques that</p> <p>20 can be used. It's been around for a long time. And it's</p> <p>21 really predicated on sort of what's called an inference</p> <p>22 engine.</p> <p>23 Q. All right. So that's college introduction to AI and</p> <p>24 Expert Systems.</p> <p>25 After college how did you continue on?</p>
<p style="text-align: right;"><b>1607</b></p> <p>1 take care of them.</p> <p>2 Q. Is that for us, for our reference, is that in the</p> <p>3 Philadelphia area?</p> <p>4 A. It's generally outside of Philadelphia. Pretty far</p> <p>5 out, about 45 minutes outside.</p> <p>6 Q. I'd like to understand your entrance into the field of</p> <p>7 technology, and perhaps we can start that by letting the</p> <p>8 jury understand your educational background and go from</p> <p>9 there.</p> <p>10 A. Okay.</p> <p>11 Q. So you went to college where?</p> <p>12 A. Lehigh University for civil engineering.</p> <p>13 Q. And then how did you get into technology from civil</p> <p>14 engineering?</p> <p>15 A. It was quite by accident. I really couldn't afford to</p> <p>16 go to Lehigh, so I had to take overloaded courses, meaning</p> <p>17 I took extra course loads. It afforded me the opportunity</p> <p>18 as a freshman to take a CAD cam, GKS programming and an</p> <p>19 analytics course. It was a junior level course.</p> <p>20 And the professor took note of this and actually</p> <p>21 offered me a job that summer working on a project for the</p> <p>22 National Science Foundation.</p> <p>23 Q. And what was that project?</p> <p>24 A. The project was actually called the Bridge Fatigue</p> <p>25 Investigator. It's actually the early use of artificial</p>	<p style="text-align: right;"><b>1609</b></p> <p>1 A. Yeah, so the project sort of give me an opportunity to</p> <p>2 see, you know, a lot of value could come from applying just</p> <p>3 technology. Here we're actually talking about bridge</p> <p>4 fatigue investigation and repairing bridges. It was more</p> <p>5 interesting to me than going down the path of building</p> <p>6 high-rises or doing my own bridge design.</p> <p>7 So I pursued through a connection from the same</p> <p>8 professor an attorney at Stone &amp; Webster, the division of</p> <p>9 Stone -- they actually designed nuclear power plants, but</p> <p>10 the division I worked for was called the Advanced Systems</p> <p>11 Development Services Group.</p> <p>12 Q. And how did that, what did that do and how did that</p> <p>13 bear on your continuing work and experience into this kind</p> <p>14 of technology?</p> <p>15 A. They were a consulting firm. We actually built</p> <p>16 solutions for clients. I worked on fire damage control in</p> <p>17 nuclear submarines. We did a simulation of coal switching</p> <p>18 at Ontario Hydro, like \$25 billion coal contracts, and they</p> <p>19 had to decide what coal to actually run through the plant.</p> <p>20 We simulated that. We also did Barbie Doll</p> <p>21 packaging, for F150 steering knuckle design, Cessna</p> <p>22 aircraft leading spar design, all automated design</p> <p>23 activities.</p> <p>24 Q. Using this AI and Expert Systems?</p> <p>25 A. A variety of techniques beyond Expert Systems, neural</p>

**1630****1632**

1 rule by its very nature and by its label refers to rules  
 2 that the business actually control or own.  
 3 So they're the ones that come up with it.  
 4 They're the ones that have to actually get it into some  
 5 kind of operating function. They're the ones that have to  
 6 ensure that it's separating the way they intend it to be.  
 7 They're the ones who have to make sure it's a compliant  
 8 rule.  
 9 And so there's this connectivity between the  
 10 business having a care and ownership of that versus not.  
 11 I'll give you an example.  
 12 You actually want to convert a date of birth to  
 13 an age. That actually constitutes a rule, not something a  
 14 business person is generally interested in.  
 15 Q. Then now let's talk about what a business rule is in  
 16 contrast to that.  
 17 A. They can be quite varied. But by their pure  
 18 definition, they are rules that the business actually cares  
 19 to use to operate their business. Very frequently those  
 20 rules change. They change from pressures from a variety of  
 21 reasons.  
 22 One is compliance. Another one would be new  
 23 product introduction. Some of it might be competitive  
 24 pressure that they have to adjust against. There's a lot  
 25 of reasons why, but in the core systems of banks and

1 Q. And in fact were you the person who gave final approval  
 2 for the pricing of this license agreement?  
 3 A. I don't recall that, but it would have been me, yes.  
 4 Q. Okay. And would it have been you that approved the  
 5 pricing for each of the amendments, Amendment one and  
 6 Amendment two?  
 7 A. It would have required my approval, yes.  
 8 Q. In 2006, and going back to the discussion we just had  
 9 about the -- we can take this down now for a little bit.  
 10 Going back to the discussion that we had about  
 11 the business model and the software industry and the  
 12 investment before turning profit, in 2006, that time frame,  
 13 what were FICO's discounting practices regarding Blaze  
 14 Advisor?  
 15 A. I would use the word "aggressive."  
 16 Q. Okay. Can you build on that for us?  
 17 A. Look. 2002 we just get this thing off the ground.  
 18 2003, there's three of us kicking around into 2004. We're  
 19 look to go secure enough business to get references in the  
 20 industry.  
 21 Once you get those references and clients see  
 22 what you are able to accomplish with other clients, that  
 23 builds on itself, and you start to build a base of more  
 24 sales, both with the same clients or with new clients.  
 25 So it's not uncommon early in software to be

**1631****1633**

1 insurance, those core rules actually become the  
 2 representation of how they do business.  
 3 Q. So if we were going to try to understand the  
 4 significance within a company, I take it that we should be  
 5 asking about the business rules as opposed to their rules.  
 6 A. Yes.  
 7 Q. Let me change topics again. Well, let me -- yeah, let  
 8 me do this first.  
 9 If we could get J1, please, the license  
 10 agreement. There we go. Thank you.  
 11 So we have on the screen, and you have the book  
 12 there, Mr. Waid, J1, the software license and maintenance  
 13 agreement between Chubb & Son, a division, and FICO, right?  
 14 I'd like to know, at this stage what was your  
 15 personal role with respect to, with respect to this license  
 16 agreement?  
 17 A. So 2006, this would have been when the team was growing  
 18 to become international. So I had international remit for  
 19 Blaze and other related tools products.  
 20 So I would have actually been involved in any  
 21 sort of core decisions made around pricing or material  
 22 changes in our contract terms or things of that nature.  
 23 They would have had to come to me for approval.  
 24 Q. So your involvement at the management level?  
 25 A. Yes.

1 quite aggressive by discounting very low sometimes in order  
 2 to secure those reference accounts and secure that initial  
 3 business.  
 4 Q. For the prospect of future business?  
 5 A. Always for the prospect of future business, yes.  
 6 Q. And when we look at the license agreement, we see that  
 7 Amendment Two was signed at the end of December of 2006.  
 8 A. Yes.  
 9 Q. Did that, does that timing bear on FICO motivations  
 10 with this product for discounting?  
 11 A. At this time it did.  
 12 Q. Why?  
 13 A. It was -- it was our general practice to incent  
 14 customers to move to larger deals as quickly as possible.  
 15 It was our common practice at the time, if they bought an  
 16 initial license, to communicate to them in some form,  
 17 either written or go back and try to convince them, hey, if  
 18 you upgrade your license or if you buy more, I will credit  
 19 back what you've already bought 100 percent, just so you  
 20 buy more.  
 21 Those practices were quite common at that time  
 22 frame, yes.  
 23 Q. Okay. Can you contrast that to 2016?  
 24 A. Very different.  
 25 Q. And how and why?

**1634****1636**

1 A. Our pricing model -- well, pricing model always been  
 2 our pricing model, but our pricing practices around  
 3 discount around the 2010-11, time frame, we started  
 4 becoming more stringent in how and where we actually  
 5 offered discounts. That's reflected in the business.  
 6 We also changed other practices too. Like we  
 7 began moving away from perpetual licenses. The market was  
 8 moving away. We were moving away. We were moving towards  
 9 term licenses, which establish a reoccurring revenue base  
 10 for the product.  
 11 Q. You mentioned standard pricing guidelines did not  
 12 change from that time frame.  
 13 A. The pricing and how we priced did not change, no. It's  
 14 the same pricing model that we had all the way back in  
 15 2003.  
 16 Q. But discounting has changed?  
 17 A. Yes.  
 18 Q. And in terms of market acceptance to FICO's pricing  
 19 without the aggressive discounting, can you describe that?  
 20 A. Yeah. We began in the 2000 -- I said 2010, 2011 time  
 21 frame of sort of pulling back on the level of discounts and  
 22 by 2015 into '16, you know, relatively strong flat sales.  
 23 Going into '17 we had even more sales, 20 percent by my  
 24 last look of that.  
 25 So it was, it was a strong business at that point

1 A. Yes, the client is bound to all of the terms of the  
 2 agreement.  
 3 Q. And the -- we've seen already that in the definition  
 4 of -- in Amendment One and Amendment Two, the definition of  
 5 "client" did not change.  
 6 Were you part of any discussions during that time  
 7 frame of Chubb & Son wanting to sign -- of any discussion  
 8 about the client being anybody else but Chubb & Son?  
 9 A. No.  
 10 Q. Going back to the basic, to the base agreement, we look  
 11 at the license grant in paragraph 2.1. And there we see,  
 12 just as you said, the licenses is a, "hereby grants to  
 13 client."  
 14 But I'm also interested in asking your, the  
 15 business reasons for the fact that the license agreement  
 16 says it's non-transferrable, nonexclusive and a limited  
 17 license.  
 18 A. Yeah, so first of all, software licenses are a  
 19 construct whereby ownership stays with FICO. It's our IPR  
 20 software. The license just gives them a right to use, and  
 21 there's specific conditions under that right to use.  
 22 This begins to outline the fact that this  
 23 agreement is with the client, and they cannot transfer this  
 24 agreement to anybody else, and it is nonexclusive, meaning  
 25 it is not just for them, and that there are limits framed

**1635****1637**

1 in time.  
 2 Q. Without aggressive discount?  
 3 A. Without aggressive discounting, yes.  
 4 Q. If we could go back to the license agreement, please.  
 5 You see at the top of the, at the top of the  
 6 license agreement in the first paragraph, if we could open  
 7 that up.  
 8 A. Yes.  
 9 Q. The software license and maintenance agreement is  
 10 entered into as of June 30, 2006, between Fair Isaac  
 11 Corporation and Chubb & Son, a division of Federal, client.  
 12 From your role on the business of FICO, but  
 13 specifically in the licensing of Blaze Advisor, what's the  
 14 significance, what's the business significance of defining  
 15 who the client is?  
 16 A. It defines who you are doing business with. It defines  
 17 who you are licensing the software to.  
 18 Q. Okay. And does it also -- well, a license agreement  
 19 is, of course, a two-way agreement, licensor/licensee.  
 20 A. Yes.  
 21 Q. And FICO as the licensor is bound by the terms of the  
 22 agreement.  
 23 A. Yes.  
 24 Q. And then on the licensee side, it's the client that's  
 25 bound by the terms of the agreement.

1 within this agreement that they must adhere to.  
 2 Q. And what's the business thinking behind the phrase "for  
 3 internal business purposes only"?  
 4 A. Yeah. So this is an additional protection that we want  
 5 to make sure that the use of the license, the right to use  
 6 the license, is for the individual that we're licensing to,  
 7 in this case the client, and that it is for their internal  
 8 business purposes, and they can't extend or reach that use  
 9 of the license outside of the use just for that client.  
 10 Q. Let's turn to 3.1. This is called License  
 11 Restrictions. There's a number of them, but overall,  
 12 what's the commercial business reason for FICO to put  
 13 restrictions into the license?  
 14 A. They're all there to make sure that the software is  
 15 used in accordance with very specific constraints or  
 16 limitations that we place on that license grant. There's  
 17 various reasons for them from a business perspective, but  
 18 all of it is to protect a very valuable piece of IP.  
 19 Q. Being Blaze Advisor?  
 20 A. In this case Blaze Advisor.  
 21 Q. If we go into 3.1, we see the small Roman iv. So it.  
 22 Begins, "Client represents and warrants that it and its  
 23 employees shall not," and then Roman, small Roman iv,  
 24 "disclose the Fair Isaac products to or permit use or  
 25 access of the Fair Isaac products by any third party or any

**1638****1640**

1 individuals other than the employees of client."  
 2 So let me stop at that point with "any third  
 3 party."  
 4 Why does FICO care that the Blaze Advisor  
 5 software cannot be disclosed used or accessed by any third  
 6 party?  
 7 A. There's a number of reasons, two primary business  
 8 reasons. We like to know who is using our software at all  
 9 times. That third party could be a competitor or that  
 10 third party could be leaking confidential information about  
 11 the use of our software to a competitor. It has happened  
 12 in the past, so we want very tight controls on who actually  
 13 gets access to that software.  
 14 Another business reason is also, there is a bit  
 15 of an integrity issue in the business here. Third parties  
 16 purport themselves to be Blaze experts all the time, and we  
 17 do not want third parties getting access to Blaze software  
 18 unless we've at least had a conversation with the client  
 19 about that third party and any representations that they've  
 20 made.  
 21 Q. Well then let's go to, we'll come back to 3.1, but then  
 22 let's go to 3.6. And here we have a provision, Use By  
 23 Third party.  
 24 Is this an instance of what you just described  
 25 where the client wishes to have a third party, here ACS

1 Let's go back to 3.1(iv,) small Roman four,  
 2 "Client represents and warrants that it and its employees  
 3 shall not," and we read about the disclosed. And then it  
 4 goes on, "permit use or access by any third party or by any  
 5 individual other than the employees of client."  
 6 From the business point of view, why is that  
 7 further restriction limiting, further restriction saying  
 8 only employees of the client?  
 9 A. Well, it's very similar to the third party. Our  
 10 agreement is with the client, and they are responsible for  
 11 making sure that the terms are agreed to and that flows  
 12 down through the employees of the client. If they end up  
 13 giving it to somebody who is not an employee, where is the  
 14 terms and conditions being enforced?  
 15 Q. Your further understanding of the license agreement,  
 16 I'd like to go to what's called Exhibit A.  
 17 A. Exhibit A.  
 18 Q. Exhibit A of the base document. It's J001-011 on the,  
 19 our copy.  
 20 A. Exhibit A of the contract.  
 21 Q. Yes. Yes.  
 22 A. I am there.  
 23 Q. And this Exhibit A is called Pricing and Payment.  
 24 And I want to ask you to explain for us some of  
 25 the things that are on here, including and starting with

**1639****1641**

1 Commercial Solutions, have access and use of Blaze Advisor  
 2 on behalf of the client?  
 3 A. Yes. It looks like a negotiated term whereby  
 4 third-party use was granted in a very specific case of ACS.  
 5 That conversation must have occurred. And furthermore,  
 6 I'll point out here that this section holds ACS to the  
 7 obligations of the license grant and also the client to  
 8 ACS's responsibility to the license grant, which is what I  
 9 didn't mention yet another thing we're concerned about.  
 10 If the third party is going to use it, we want to  
 11 make sure that they're aware and they're behold to the  
 12 contract terms of the license grant.  
 13 Q. And you also bound the client to be responsible should  
 14 ACS not abide by it.  
 15 A. Absolutely, because it's arm's reach for us, so yes.  
 16 Q. And then the last sentence is clear saying what?  
 17 A. This is basically saying you have a, you have a right  
 18 to use it with ACS but nobody else unless you actually come  
 19 back and ask for our consent.  
 20 Q. You mentioned just by looking at it that this was a  
 21 negotiated term. How did you, how were you able to tell  
 22 that?  
 23 A. Well, it's easy because we don't allow ACS to use our  
 24 software in every one of our contracts.  
 25 Q. All right. Okay. Dumb question.

1 Blaze Advisor Development. And what is that as a product?  
 2 A. Yeah. So Blaze Advisor is actually broken down into  
 3 multiple licensing components. The two primary components  
 4 of the licensing are around what we call our development  
 5 and our deployment licenses.  
 6 A development license is in the Blaze world are  
 7 licenses that are granted and limited to the purposes of  
 8 writing rules, connecting your Blaze Advisor application to  
 9 your systems and data and actually generating the  
 10 deployment that gets eventually put into the servers of the  
 11 client.  
 12 It's predominantly a technical tool, but the  
 13 technical tool also generates what we call rule maintenance  
 14 application, which is where business users can use that.  
 15 So it's the, it's the primary licensing component for that,  
 16 that development, authoring, connectivity and integration  
 17 work.  
 18 Q. And at the outset at the original agreement in June for  
 19 use up to five seats, and then it goes on, "to be used  
 20 solely in connection with the named application." We'll  
 21 get to that named application component in a bit, but what  
 22 does it mean for up to five seats?  
 23 A. Yeah. The, the development license is actually  
 24 associated with a portion of the software that actually  
 25 installs on a personal computer or a workstation.

**1642****1644**

1 Developers or programmers that use Blaze Advisor would have  
 2 that installed on their development machine where they do  
 3 their programming and where they do their work. And this  
 4 is saying, you know, five of them.  
 5 Q. Okay. And I'm going to skip over platform for a moment  
 6 because it's both in development and deployment. Let's  
 7 distinguish development so that we can under what  
 8 deployment is.  
 9 A. Yeah, so the deployment license is actually referring  
 10 to, when you have authored your rules and tested them that  
 11 they are what you want them to be, you have to take those.  
 12 Rules and push them out into a server or some  
 13 processing unit somewhere. And there's actually various  
 14 ways you can do that, technical ways you can do that, not  
 15 really relevant here, but the license to do that is that  
 16 run time piece that allows it to eventually go to  
 17 production and execute or operate, run those rules.  
 18 Q. Okay. And then in terms of the scope and quantity,  
 19 scope and quantity for development was five seats. Scope  
 20 and quantity for deployment is named application.  
 21 A. Correct.  
 22 Q. And that, of course, is defined below as the CSI  
 23 Express.  
 24 Now going back to product, there's the reference  
 25 here platform, Java and .NET. Would you explain what those

1 parenthetically, which is Chubb's specialty insurance  
 2 underwriting and automated policy renewal application. And  
 3 it's supporting systems applications excluding claims.  
 4 Q. And in a general nomenclature, is this called a named  
 5 application license?  
 6 A. It is what we call a named application license, yes.  
 7 Q. Well, let's go to Amendment Two -- or I'm sorry --  
 8 Amendment One.  
 9 A. I'm there.  
 10 Q. Okay. Our product. We have the Blaze Advisor  
 11 development product, Blaze Advisor deployment product. The  
 12 platform is still both, Java and .NET. And the scope  
 13 quantity is now, let's do development first. For use on up  
 14 to ten seats to be used solely by the Chubb specialty lines  
 15 division.  
 16 And then for development, that product, scope  
 17 quantity, for use solely by the Chubb specialty lines  
 18 division. No other limitations, i.e. seat, or named  
 19 application limits apply.  
 20 So from your business perspective point of view,  
 21 can you interpret that in -- just tell us what that means.  
 22 A. I think you meant deployment.  
 23 Q. I -- yes, I did.  
 24 A. Yeah. The fencing around our licensing in this  
 25 particular case is a very specific business function. So

**1643****1645**

1 are?  
 2 A. Yeah, they're essentially programming languages.  
 3 They're technology that programmers would use. If you  
 4 remember, I said you could deploy. You could actually pull  
 5 in the data that the client has, and you can deploy to the  
 6 servers. If that data is or that server is in the .NET  
 7 platform or technology, you would need that particular  
 8 license. If it was based on the Java technology, you would  
 9 need that license.  
 10 So -- and they are separate licenses, and in this  
 11 case this order form has both.  
 12 Q. Okay. And in terms of the standard pricing of, you're  
 13 using a FICO pricing methodology that you've been using  
 14 over the years, decades now, does the number of platforms  
 15 that are licensed impact the price?  
 16 A. It does.  
 17 Q. We will catch up with that issue later on, but just to  
 18 make that note.  
 19 Then the limitation --  
 20 We'll go down, if you will, Mr. Mayleben,  
 21 Definition of Named Application.  
 22 And I think we've seen the definition before, but  
 23 in terms of the permission granted to use Blaze Advisor,  
 24 what is the limitation of scope in this agreement?  
 25 A. It's described as the CSI Express application,

1 call it specialty, specialty lines or the division of  
 2 specialty lines. What it's saying is that in that division  
 3 and in that scope of that business type, they can use Blaze  
 4 Advisor for any number of applications that they wish to  
 5 without measure CPUs or others or limitations.  
 6 Q. If it's for that division.  
 7 A. For that division, yes.  
 8 Q. Now when you say "they," is that the client?  
 9 A. Absolutely.  
 10 Q. And in your terminology this is called a divisional  
 11 license?  
 12 A. Divisional license, yes.  
 13 Q. And now let's turn to Amendment Two.  
 14 THE COURT: Mr. Hinderaker, are you at a  
 15 convenient breaking point?  
 16 MR. HINDERAKER: I surely am.  
 17 THE COURT: Okay. Members of the jury, we'll  
 18 take our afternoon or at least one of our afternoons  
 19 breaks, but I think we'll try and shorten it up if you can  
 20 be back in at ten minutes after 3:00. All rise for the  
 21 jury.  
 22 (Recess taken)  
 23 THE COURT: Be seated.  
 24 BY MR. HINDERAKER:  
 25 Q. So at the break we were just going to start talking

**1658****1660**

1 And as you see -- I'll wait till it's on the  
 2 screen. This is from Russ Schreiber to Natasha Fowlin, and  
 3 you are one of the CC recipients?  
 4 A. Yes.  
 5 Q. And Russ says, "Can you put 30 minutes on the calendar  
 6 for this group to discuss ACE's acquisition of Chubb and  
 7 potential licensing expansion fees?"  
 8 And obviously you were part of that  
 9 communication.  
 10 A. Yes.  
 11 Q. Okay. At this point in time, did you have any  
 12 information about the acquisition, other than what was  
 13 publicly announced?  
 14 A. No.  
 15 Q. Nothing came, no information from Chubb & Son to you?  
 16 A. No.  
 17 Q. What did you understand -- well, what was your reaction  
 18 to -- you don't have to say what Mr. Schreiber thought, but  
 19 what was your reaction to him saying, "Let's discuss ACE's  
 20 acquisition of Chubb and potential licensing fees  
 21 expansion"?  
 22 A. Well, I have regular calls with Russ, because he's our  
 23 insurance global lead, and I'm at this point in time  
 24 running our platform line of business. So we speak on a  
 25 regular basis, and so I had become aware of the merger

1 A. I was.  
 2 Q. Other than, other than -- I take it you -- Mr. Carretta  
 3 had authority to send the letter.  
 4 A. He did.  
 5 Q. But were you involved at all in the crafting of the  
 6 language of the letter?  
 7 A. Not the language, no.  
 8 Q. So we'll leave that to Mr. Carretta's testimony about  
 9 that.  
 10 And then if you would turn to Exhibit Number 91.  
 11 And now it's Andrew Hopp, Deputy General Counsel,  
 12 responding to Mr. Carretta, February 17, 2016. You were  
 13 aware of this response, were you?  
 14 A. Yes.  
 15 Q. And did you read this response from Mr. Hopp?  
 16 A. Yes.  
 17 Q. What was your reaction to what he's saying?  
 18 A. There were a couple. The first one was, he sort of  
 19 missed the point that there was an event that needed our  
 20 consent.  
 21 Q. Okay. Agreed. And the second one was what?  
 22 A. He, he made a reference to, that the client remained  
 23 the same and that that was sufficient, which confused me.  
 24 Q. Okay. And you say in the second paragraph, he says,  
 25 "Our initial findings indicate that the applications that

**1659****1661**

1 announcement in October.  
 2 And in my last conversation with him, I asked him  
 3 where do we sit in actually having a conversation with  
 4 Chubb about the impending merger. And his answer was, we  
 5 don't have one. We don't have any contact. So I asked  
 6 him, I'm like let's get Mike Sawyer on the phone. Let's  
 7 figure out who do we call. We got to know somebody at  
 8 Chubb who can actually address this, right?  
 9 This is Russ's conclusion about the licensing  
 10 event. It's not an unfair conclusion. It typically  
 11 happens this way that there's a license event. But the  
 12 purpose of this call was actually entirely about how do we  
 13 reach Chubb, who do we reach at Chubb, because we need some  
 14 information about what's coming.  
 15 Q. And then did you get any information before the  
 16 acquisition closed?  
 17 A. I did not. I knew that Mike went back and tried a  
 18 bunch of his resources, but we did not have any information  
 19 all the way through into January.  
 20 Q. All right. So we've seen from Mr. -- let me turn your  
 21 attention to Exhibit 90. And this is Mr. Carretta's  
 22 January 27, 2016, letter to Joseph Wayland at Chubb  
 23 Limited.  
 24 Were you aware that -- are you aware of this  
 25 notice of breach letter on or about its time?

1 have been utilizing the Blaze Advisor software since 2006  
 2 are currently running in the exact same fashion as prior to  
 3 the merger transaction."  
 4 Did that have any significance to you?  
 5 A. It reassured me that he was following the contract in  
 6 that he was, during this period, before consent was given,  
 7 he was locking it down. I'm not sure how convinced I was,  
 8 but it was reassuring.  
 9 Q. And he also references that his IT people are in the  
 10 process of gathering information. Let's stay in or around  
 11 this time frame of February. Were you the -- did you  
 12 receive any additional, any information -- let me back up.  
 13 Before the letter from Mr. Carretta went out, you  
 14 said you had no information from Chubb & Son regarding the  
 15 acquisition.  
 16 A. That's correct.  
 17 Q. And in a reasonable time frame after February 17th, did  
 18 you on the business side, receive any information regarding  
 19 any more information that wasn't in this letter from  
 20 Mr. Hopp?  
 21 A. No.  
 22 Q. And then Mr. Carretta responded on February 22nd, and  
 23 we've heard his testimony.  
 24 And were you on the business side with respect to  
 25 the working with -- the authority for Mr. Carretta to send



**1662****1664**

1 Exhibit 92 out? Did you have any?

2 A. I'm sorry.

3 Q. I'm sorry. I was waiting for an answer, but you were

4 waiting for a question.

5 You okayed Mr. Carretta to send this letter out?

6 A. Yes, I agreed.

7 Q. All right. I was going to ask you something about

8 this.

9 And the Carretta, the two Carretta letters are,

10 at the conclusion, encouraging business discussions with

11 Chubb & Son. Did you share that desire?

12 A. Absolutely. Ten years of wonderful relationship with

13 Chubb, and they're our first foray into commercial and

14 specialty lines insurance. They were a great reference.

15 They spoke at FICO World. They took reference calls for

16 clients on new sales all the time, and they were great

17 people too. They were, they were good to work with.

18 Q. So then let's move forward to Exhibit 94. You were

19 aware of -- the communication of course is from Tamra

20 Pawloski to Mike Sawyer, carbon copy to Russ Schreiber; and

21 then the second page of the document has a proposal

22 February 25, 2016, sent to FICO.

23 Were you aware of this response from Chubb & Son

24 at the time?

25 A. Yes, it was sent to me.

1 faith or bad faith proposal?

2 A. My impression was, this was a bad faith proposal.

3 Q. For the reasons you said or for any additional ones?

4 A. For the reasons I just said.

5 Q. As a consequence of receiving this proposal, did you

6 have any -- was there any reason to doubt that Blaze

7 Advisor would be used in the new larger organization now

8 called Chubb Limited now, the 30 plus billion dollar

9 organization?

10 A. No. The letter itself is very clear. They want the

11 right to use the 15 applications and change them however

12 they want, whenever they want. So it's clear that they're

13 talking about the 15 to begin with, but they're talking

14 about open door policy for anything in the future.

15 Q. In any single Blaze Advisor application, is it possible

16 to change the functionality within that application to

17 service more business?

18 A. The intention of the license definition and grant is

19 no.

20 Q. Under the proposal of February 25, 2016, what's your

21 interpretation?

22 A. That's exactly what she's asking to do.

23 Q. If you would go to Exhibit 227. And we see this is a

24 Chubb Corporation annual report of 2005.

25 A. Yes.

**1663****1665**

1 Q. Okay. And -- well, what was your reaction and reading

2 of it?

3 A. It's what I would call a non-starter. That basically

4 means it cannot be accepted on its face value.

5 Q. Why do you say that? And give us the details for that.

6 A. There's a number of reasons why, but let me start with

7 the most egregious one of them, which is this statement

8 here that the applications listed below, "That currently

9 utilize Blaze Advisor software, these are the same

10 applications using the software both prior to and after the

11 merger. Under the above proposal, Chubb shall have the

12 right to change the applications utilizing Blaze software

13 at any time at its sole discretion without FICO's concept

14 so long as the named applications do not exceed 15," the

15 amount of 15.

16 We grant licenses. Our clients don't grant

17 themselves licenses. That's a core tenet of our license

18 agreement. Besides that, fundamentally there's no

19 governance on that statement. They could call anything,

20 you know, an application and say that's going here from

21 there to here, right.

22 There's no definition of it. There's no common

23 understanding of it. That alone completely threw the

24 proposal out of question.

25 Q. Okay. Did you draw a judgment whether it was a good

1 Q. And on page 22, if we go to that, we saw a similar list

2 earlier. Here we have the list of the officers of the

3 division Chubb & Son, right?

4 A. I'm sorry. 22 or 24?

5 Q. Yeah, I'm on page 20 -- well, the Bates number, the

6 Exhibit Number is 0227-024.

7 A. I'm there now.

8 Q. Okay. So there we have the, well the whole page is

9 bigger than on the screen, and there we have the officers

10 of Chubb & Son at that point in time.

11 And then I want to go to, I want to go to page 4

12 and just use this as a reference where we see net written

13 premiums grew 2 percent to 12.3 billion, on page 4. It

14 would be the second full paragraph.

15 A. Can I ask you to clarify page 4 of what? It's the

16 Bates page 4?

17 Q. Yeah. So page 2 of the actual document, and at the

18 bottom it says P-0227-004.

19 A. Thank you. Yes, I see it now.

20 Q. Okay. So, so that's a reference point for the 2006

21 license agreement?

22 A. Yes.

23 Q. And then I think we've mentioned that that was the data

24 point used in pricing of the original license agreement in

25 2006, correct?

**1666****1668**

1 A. It was a data point used in several pricing exercises  
 2 in 2006, yes.  
 3 Q. Right. Right. But as a data point. And then let's go  
 4 to 958.  
 5 And the front page is the Chubb Limited annual  
 6 report for 2016.  
 7 A. Yes.  
 8 Q. And let's go to page 3 of the annual report, not -- or  
 9 5 on the exhibit number or 3 on the report.  
 10 A. Page 3.  
 11 Q. Yes.  
 12 A. There.  
 13 Q. All right. And here it reports that, if we can go to  
 14 the left-hand column, "We completed to my fellow  
 15 shareholders," there we go. Right at the top, "We  
 16 completed the largest merger in insurance company history  
 17 and integrated two complementary insurance organizations,  
 18 ACE Limited and the Chubb Corporation, transforming  
 19 ourselves into the highest quality and largest  
 20 publicly-traded property and casualty insurance company in  
 21 the world."  
 22 And if we go to -- trying to find the reference  
 23 to, the reference to the size of the new organization, and  
 24 honestly I'm not finding it fast enough.  
 25 So let me simply just ask, In terms of the

1 the third-party consultant called DWS Group, and then after  
 2 that I want to ask you questions about what you know about  
 3 the third-party consultant called AppCentrica. We will  
 4 take them one at a time.  
 5 So if you would go to Exhibit 147A, please.  
 6 A. I am there.  
 7 Q. All right. And if we can put that on the screen. I  
 8 see the cursor, but -- he's having a little glitch. Hang  
 9 on a second. There we go.  
 10 From the first page, you see this is Federal  
 11 Insurance Company's Second Supplemental Answer to  
 12 Interrogatories 2, 3 and 4.  
 13 And let's look at interrogatory 2 on the next  
 14 page.  
 15 MS. GODESKY: Mr. Hinderaker.  
 16 MR. HINDERAKER: Yes.  
 17 MS. GODESKY: I just want to confirm you are  
 18 showing 147A because it says 147.  
 19 MR. HINDERAKER: It's on the screen.  
 20 MS. GODESKY: Okay.  
 21 MR. HINDERAKER: No. 147A. All the blackout.  
 22 MS. GODESKY: Sorry.  
 23 MR. HINDERAKER: We seem to be having a  
 24 transmission issue.  
 25 All right.

**1667****1669**

1 value-based pricing of FICO and in terms of the business  
 2 purposes around that second sentence in paragraph 10.8,  
 3 what from your business point of view is the consequence of  
 4 Chubb & Son going from \$12 billion -- going from being a  
 5 part of a \$12 billion organization to being a part of a 30  
 6 plus billion dollar organization?  
 7 A. That is a very significant change in circumstances.  
 8 Q. And then if we go to Exhibit 95. And this is building  
 9 off of or in the same time, the next day after that  
 10 commercial proposal of February 25th.  
 11 Mr. Carretta says, "The proposal was not  
 12 acceptable from our business and compliance teams, and I  
 13 confirm it is rejected."  
 14 A. Yes, that's what it says.  
 15 Q. And you authorized that?  
 16 A. Yes.  
 17 Q. And then if we go to Exhibit 103, this is  
 18 Mr. Carretta's notice of termination letter, which we've  
 19 gone through with him, the termination being effective the  
 20 next day. And you --  
 21 Did you authorize the sending of the termination  
 22 letter as well?  
 23 A. Yes, I agreed.  
 24 Q. I would like to now change topics, and I want to talk  
 25 about the, I want to talk about the, what you know about

1 So interrogatory number 2, if we can get that a  
 2 little bigger, please.  
 3 BY MR. HINDERAKER:  
 4 Q. "Identify every person, division or entity, other than  
 5 employees of the division Chubb & Son, to whom Federal has  
 6 disclosed the FICO Blaze Advisor software after June 30,  
 7 2006." And then there are those subparts.  
 8 Now let's go down the page to the second  
 9 supplemental answer. It would be page 2 of the document.  
 10 I think you are on page 3.  
 11 Well, let me read it. You have it in your  
 12 binder.  
 13 A. I do. I do.  
 14 Q. The second supplemental answer, "Disclosure of the  
 15 Blaze Advisor software was made to at least the following:  
 16 One, Chubb Insurance Company of Europe SE. Two, Chubb  
 17 Insurance Company of Canada, including through its  
 18 relationship with AppCentrica and Chubb Insurance Company  
 19 of Australia Limited including through its relationship  
 20 with DWS Group." Do you see that?  
 21 A. I do.  
 22 Q. And I'm going to first go, before more questions, we'll  
 23 go to the interrogatory number 3, if we could get there.  
 24 Great. Interrogatory number 3, and you see it  
 25 says, "Identify every person, division or entity, other

**1892****1894**

1 A. Mm-hmm.  
 2 Q. Okay. So in your deposition we reviewed, we reviewed  
 3 some interrogatory responses, and we reviewed some  
 4 financials. Do you recall that?  
 5 A. Yes.  
 6 Q. And I'd like you to look at Exhibit P404A, which is a  
 7 redacted copy. And you'll see on this --  
 8 Your Honor, this is not in evidence yet, so I  
 9 just want to slow down and check that box before we get too  
 10 far.  
 11 So this is Deposition Exhibit Number 407, which  
 12 was Plaintiff's Trial Exhibit 404A, which we've redacted  
 13 consistent with the ninth supplemental interrogatory  
 14 responses.  
 15 Mr. Harkin, do you recall seeing this at your  
 16 deposition?  
 17 A. Generally, yes.  
 18 Q. Okay.  
 19 Your Honor, I move to admit Exhibit P404A.  
 20 MS. JANUS: No objection.  
 21 THE COURT: P404A is received.  
 22 BY MS. KLIEBENSTEIN:  
 23 Q. And the title of this document is Federal Insurance  
 24 Company's Fifth Supplemental Answer to Plaintiff's  
 25 Interrogatory Number 16 and Sixth Supplemental Answer to

1 page 10 where it defines interrogatory number 17.  
 2 And let's blow that up.  
 3 And interrogatory number 17 is, "For all  
 4 insurance policies in connection with which the Blaze  
 5 Advisor software was used, the gross written premium of  
 6 defendants and the gross written premium of each related  
 7 company, including the specific identification of each  
 8 related company, for each quarter from March 30th, 2016, to  
 9 date."  
 10 Do you agree with my reading of interrogatory  
 11 number 17?  
 12 A. Yes.  
 13 Q. So I wanted to spend some time confirming how the  
 14 numbers, if we can scroll back out and back to  
 15 interrogatory number 16. I just want to take the time to  
 16 confirm for the record how the numbers were pulled.  
 17 Let's go to 16. Perfect. Now move forward one  
 18 page, Mr. Mayleben. All right.  
 19 So on that page, do you see a table titled  
 20 DecisionPoint?  
 21 A. Yes.  
 22 Q. And in your deposition, I asked you what's your  
 23 understanding of the information that's --  
 24 MS. JANUS: Objection.  
 25 THE COURT: Sustained. You can ask him the

**1893****1895**

1 Plaintiff's Interrogatory Number 17.  
 2 Do you see that?  
 3 A. I do.  
 4 Q. And so this was an interrogatory, a question, from FICO  
 5 to the defendants. Do you agree with that?  
 6 A. Yes.  
 7 Q. And the defendants provided answers to FICO, correct?  
 8 A. Correct.  
 9 Q. And in our deposition we went through these  
 10 interrogatories to determine where the gross written  
 11 premium revenue dollars, where they came from, how they  
 12 were collected. Do you recall that?  
 13 A. Yes.  
 14 Q. Let's just take the time to look at interrogatory  
 15 number 16 and number 17.  
 16 And I have interrogatory number 16 up on the  
 17 screen. And it is, it says, "For all insurance policies in  
 18 connection with which the Blaze Advisor software was used,  
 19 the gross written premium of defendants and the gross  
 20 written premium of each related company, including the  
 21 specific identification of each related company, for each  
 22 year from 2007 to 2012."  
 23 Do you agree with that?  
 24 A. Yes.  
 25 Q. And then let's go just to level set, let's go to

1 question directly and then impeach him with the deposition,  
 2 if need be.  
 3 MS. KLIEBENSTEIN: We can go that route too.  
 4 At a 10,000-foot level what is your understanding  
 5 of the information that's contained in this first table  
 6 titled DecisionPoint, for DecisionPoint?  
 7 THE WITNESS: It is the gross written premium and  
 8 policy count that ran through the DecisionPoint application  
 9 and used the Blaze software.  
 10 BY MS. KLIEBENSTEIN:  
 11 Q. And scrolling back out and down.  
 12 For CSI Express, can you tell me, same question,  
 13 right, at a 10,000-foot level, what data is reflected in  
 14 that table?  
 15 A. It is the gross written premium and the policy count  
 16 for policies that ran through CSI Express and used the  
 17 Blaze software.  
 18 Q. And I'm not, I'm not sure if this is a distinction with  
 19 any difference or not, but in your deposition you told me  
 20 it is policy count, written premium associated with those  
 21 policies and writing companies for the policies that ran  
 22 through the automated renewal process and/or -- sorry.  
 23 Wrong one.  
 24 Yeah. Okay. CSI Express. I asked you the  
 25 second table titled CSI Express Automated Renewal and

**1896****1898**

1 Profitability Indicator, can you tell me at a 10,000 foot  
 2 level what data is reflected in that label.  
 3 And I think this is what you just said, but I  
 4 just want to make sure we're on the same page. It's the  
 5 policy count, written premium associated with those  
 6 policies and writing companies for the policies that ran  
 7 through the Automated Renewal Process and/or Profitability  
 8 Indicator for the, that used the Blaze software.  
 9 Are we saying the same thing?  
 10 A. Yes.  
 11 Q. Okay. Perfect.  
 12 And let's scroll back out and go to the next page  
 13 and the next page and the next page.  
 14 And here we, at the very top, we have Premium  
 15 Booking. And I'll ask you -- I'd like the table  
 16 highlighted.  
 17 I'll ask you the same question. At a 10,000-foot  
 18 level, can you tell me what data is reflected in this  
 19 table?  
 20 A. It's the policy count and gross written premium that  
 21 ran through the premium booking system and used the Blaze  
 22 software.  
 23 Q. And then let's scroll out and go down to CUW-IM.  
 24 And I'll ask you the same question again. At a  
 25 10,000-foot level, what is the data that's shown in this

1 page 102 and 103 of your deposition. I don't want to put  
 2 words in your mouth.  
 3 A. Raleigh data center, correct.  
 4 Q. Okay. And we just covered the gathering process for  
 5 interrogatory number 16. If I asked you, just so we can  
 6 move through this quickly, the same questions for  
 7 interrogatory number 17 for the applications DecisionPoint,  
 8 CSI Express, Premium Booking, CUW-IM, TAPS and IRMA, could  
 9 you tell me at a 10,000-foot level how, what that data  
 10 reflects?  
 11 A. The data reflects the policy count and associated gross  
 12 written premium and writing company that ran through the  
 13 applications you listed and used the Blaze software.  
 14 Q. For the policies that ran through the applications and  
 15 utilized Blaze Advisor software, correct?  
 16 A. Correct.  
 17 Q. Okay. We also talked about Legacy ACE writing  
 18 companies in the context of interrogatory number 17. And  
 19 if you could move to page 15 of your interrogatory.  
 20 Do you agree that the writing companies listed in  
 21 the middle of the left-hand column, the following are  
 22 Legacy ACE Writing Companies: ACE American Insurance Co.,  
 23 ACE Fire Underwriters Insurance, ACE Property and Casualty,  
 24 Illinois Union Insurance, Indemnity Insurance Co., Pacific  
 25 Employers Insurance, Westchester Surplus Sidelines and WFIC

**1897****1899**

1 table?  
 2 A. This is the policy count, written premium and writing  
 3 companies for policies that went through CUW-IM and used  
 4 the Blaze software.  
 5 Q. And let's scroll out.  
 6 And the -- you have this document in front of  
 7 you. We also have IRMA and the TAPS applications. Well  
 8 actually wait. Just the IRMA, just the IRMA application in  
 9 here.  
 10 If I asked you the same answer or the same  
 11 question, at a 10,000-foot level what data is reflected in  
 12 this, would you give me the same answer?  
 13 A. Yes.  
 14 Q. Okay. Then let's move forward to interrogatory number  
 15 17. And in interrogatory number 17 we have, again,  
 16 DecisionPoint, CSI Express, CUW-IM, TAPS, IRMA, and Premium  
 17 Booking.  
 18 Do you recall the location of the data center at  
 19 which Blaze Advisor was -- Blaze Advisor software was  
 20 installed that's used in these applications?  
 21 A. I don't recall it, no.  
 22 Q. Is it the Raleigh, North Carolina, data center?  
 23 A. If that's what I said in the deposition, yeah. I was  
 24 prepped for the deposition at that time.  
 25 Q. And if you want to refresh your recollection, I'm on

1 for business effective 1/1/11?  
 2 A. Yes.  
 3 Q. I want to spend a little bit of time on the expense  
 4 information that we looked at in your deposition, if we  
 5 could.  
 6 So in your deposition we look at, we looked at  
 7 some spreadsheets that had expenses on them, like claims  
 8 losses, commissions and other general expenses in running a  
 9 business. Do you agree with that?  
 10 A. We did look at some schedules that had that information  
 11 on it, yes.  
 12 Q. And I asked you, I asked you about the policies that we  
 13 saw in interrogatories number 16 and 17, and particularly  
 14 as it related to Premium Booking. For the policies that we  
 15 saw in Exhibit 16 and 17, would you agree that it's  
 16 extremely difficult, it's very difficult to identify  
 17 expenses directly related to the policies we looked at in  
 18 interrogatory number 17?  
 19 A. I would say we don't track or identify expenses at a  
 20 policy level.  
 21 Q. So you would agree it's, it would be impossible,  
 22 actually, to identify those expenses under your  
 23 recordkeeping?  
 24 A. Under our recordkeeping, yes.  
 25 Q. And then we also went through one -- we went through a

1900	1902
<p>1 couple of spreadsheets, but one in particular was</p> <p>2 Exhibit 409. And I have a copy if you need your</p> <p>3 recollection refreshed.</p> <p>4 And it was the, it was the expenses for the CSI</p> <p>5 and CCI business units from 2016 to 2018. Do you recall</p> <p>6 that?</p> <p>7 A. That was our best estimate of the CSI and CCI business</p> <p>8 units. We stopped tracking it at that level beginning in</p> <p>9 2016.</p> <p>10 Q. I've printed out a large copy for our eyes.</p> <p>11 A. Thank you.</p> <p>12 Q. Is this the document that we were just referring to?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And it's got a big number on the bottom,</p> <p>15 FED017882, and it was Deposition Exhibit Number 409.</p> <p>16 And can you tell me, what are the dates? What</p> <p>17 are the dates on this document?</p> <p>18 A. The dates are the years in question. So I guess more</p> <p>19 specifically what date are you referring to?</p> <p>20 Q. It spans from 2016 to 2018, correct?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. That's what I meant.</p> <p>23 And can you tell me at a 10,000-foot level, this</p> <p>24 data also included data from Canada in it as well; is that</p> <p>25 right?</p>	<p>1 interrogatory number 17 fell under that, those CSI and CCI</p> <p>2 buckets?</p> <p>3 A. From the years prior to 2016.</p> <p>4 Q. Right. And the data that's in FED017882, that's from</p> <p>5 2016 to the end of 2018. It doesn't include any Legacy ACE</p> <p>6 revenue or expenses in it, right?</p> <p>7 A. No.</p> <p>8 Q. And there's no way for us to definitively link up the</p> <p>9 costs and expenses in that document to the gross written</p> <p>10 premiums in interrogatory 17; is that right?</p> <p>11 A. That's correct.</p> <p>12 Q. And in that cost and expense spreadsheet that you are</p> <p>13 refreshing your recollection with, there's premium revenue</p> <p>14 that doesn't touch Blaze Advisor, correct?</p> <p>15 A. There would be premium in here that potentially does</p> <p>16 not touch Blaze Advisor. It's hard to definitively say.</p> <p>17 Q. And then touching on that Legacy ACE issue, going back</p> <p>18 to interrogatory number 17 when I had you identify those</p> <p>19 writing companies from Legacy ACE, do you recall where you</p> <p>20 gathered the policy and the policy information, the policy</p> <p>21 count and the revenues, what database you looked at for the</p> <p>22 Legacy ACE companies?</p> <p>23 A. For what application? For the CUW-IM?</p> <p>24 Q. That's correct.</p> <p>25 A. I believe there was a query run up against a -- the</p>
1901	1903
<p>1 A. Yes.</p> <p>2 Q. And the data in this expense spreadsheet is not</p> <p>3 specific to the policies that touch Blaze Advisor that we</p> <p>4 looked at in interrogatory 17; is that right?</p> <p>5 A. Not directly, no.</p> <p>6 Q. And would you agree with me that this report as its</p> <p>7 run, it's not part of your typical reporting processes?</p> <p>8 A. This is not part of our typical reporting process.</p> <p>9 Q. And the data that's in here comes from the CCI and the</p> <p>10 CSI segments. Is that the right word for you?</p> <p>11 A. It was our best estimate of what they would look like</p> <p>12 given that we changed the way we tracked data after the</p> <p>13 acquisition.</p> <p>14 Q. For CCI and CSI?</p> <p>15 A. For CCI and CSI.</p> <p>16 Q. And we saw those acronyms on those combined ratios and</p> <p>17 those revenue charts that we just looked at?</p> <p>18 A. For the 2002 to 2014 years.</p> <p>19 Q. Yep. Because CSI is the acronym that Chubb Corp. used</p> <p>20 to use for its specialty lines?</p> <p>21 A. Correct.</p> <p>22 Q. And CCI was the acronym for Chubb Commercial that Chubb</p> <p>23 Corp. used to use before the acquisition, right?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. And so the policies that we looked at in</p>	<p>1 CUW-IM application that included an identifier, and that</p> <p>2 identifier was then pulled up against a registration</p> <p>3 system.</p> <p>4 Q. I'll ask it a different way. The Legacy ACE data, it</p> <p>5 came from a database called Genius Legacy ACE, correct?</p> <p>6 A. A registration system Genius, yes.</p> <p>7 Q. And that's not a Legacy Chubb database, correct?</p> <p>8 A. Correct.</p> <p>9 Q. And in the context of the spreadsheet, the big</p> <p>10 spreadsheet that you are refreshing your recollection with,</p> <p>11 we talked about bulk expenses and direct expenses. And</p> <p>12 bulk expenses are things like general administrative</p> <p>13 expenses, taxes, licenses and fees. Would you agree with</p> <p>14 that?</p> <p>15 A. Yes.</p> <p>16 Q. And those are tracked at the North American level from</p> <p>17 2016 to 2018, correct?</p> <p>18 A. They're tracked at department levels within</p> <p>19 North America.</p> <p>20 Q. In your deposition you told me the bulk expenses are</p> <p>21 tracked in a larger bucket and apportioned to a line of</p> <p>22 business. Do you agree with that?</p> <p>23 A. Yes.</p> <p>24 Q. And would you agree that these bulk expenses cannot</p> <p>25 specifically be linked to an individual policy or premium?</p>



**1972****1974**

1 a ruling on these issues obviously before the charge  
2 conference.  
3 Is your best estimate that you will be done on  
4 Tuesday or Wednesday and who do you have left? Just give  
5 me the list.  
6 MS. GODESKY: So tomorrow we're calling three  
7 witnesses. Well, we'll have to continue Mr. Sawyer's  
8 video, and then we have three live witnesses, Ellen Garnes  
9 and two experts. So our directs are fairly targeted, but,  
10 you know, if they're crossing two experts, that could bleed  
11 into Monday.  
12 And then we have at least five more witnesses and  
13 one video, I believe, and that comes with the caveat that  
14 we're tinkering.  
15 THE COURT: Sure.  
16 MS. GODESKY: But I think end of day Tuesday is a  
17 fair estimate, but it could bleed into Wednesday.  
18 THE COURT: It would be aggressive, or not  
19 aggressive, but certainly optimistic. And will one of your  
20 expert witnesses be Kursh.  
21 MS. GODESKY: No. The parties have reached an  
22 agreement that we are not calling Kursh, and they are not  
23 calling their own rebuttal expert.  
24 THE COURT: Okay.  
25 MS. GODESKY: Yes.

1 Well, we'll bring forth the law and actually some  
2 nice New York law.  
3 THE COURT: Okay.  
4 MR. HINDERAKER: That an unincorporated division  
5 is indeed capable of contracting and bound by contracts,  
6 and --  
7 THE COURT: Again the bigger -- my problem is  
8 less that one than it is this issue of if they have no, if  
9 they have employees, fundamental to the license is, they  
10 can't let anybody but their employees use it, so they've  
11 now purchased a license through three amendments or  
12 through three iterations that nobody can use.  
13 MR. HINDERAKER: Yeah. I think that's not quite  
14 the way to think about it. Okay?  
15 So what, what New York law, now I know New York  
16 law, is that the division, unincorporated, is capable of  
17 contracting and being bound by, and being bound by the  
18 agreement.  
19 The fact that the division inside of the entity  
20 Federal has a consequence of a paycheck coming to the  
21 division members from Federal doesn't change the scope of  
22 the license agreement to Chubb & Son.  
23 Federal, of course, is the defendant because as  
24 the legal entity you need a legal entity to sue, but in  
25 terms of the performance of the contract, Chubb & Son --

**1973****1975**

1 THE COURT: Okay. So just so everybody's on the  
2 same page. Assuming that we get this done, testimony, at  
3 least speaking, by Tuesday, sometime 3:00 or later -- well,  
4 realistically noon or later, then closing arguments will be  
5 Wednesday morning.  
6 And -- but if we bleed over into testimony a  
7 little bit on Wednesday, we will have had the charge  
8 conference on Tuesday anyway, I think, and we'll go with,  
9 we'll get to final arguments likely Wednesday afternoon.  
10 MS. GODESKY: Okay. Understood. Thank you for  
11 that.  
12 THE COURT: Okay. Thank you.  
13 Mr. Hinderaker, come on up. Like I say, you  
14 don't need to argue anything at this point. Nothing is  
15 decided. And you get the time that you -- I'll give you as  
16 much time as I can.  
17 MR. HINDERAKER: Sure.  
18 THE COURT: Let me just on my side of it, I think  
19 the serious issue, the most serious issue is this question  
20 about "client." And, you know, looking at it from the  
21 perspective of, if I, if FICO's interpretation of Chubb &  
22 Son, a division of Federal, is valid, how would that not  
23 render the contract just basically illusory? So, I mean  
24 that's my concern.  
25 MR. HINDERAKER: Of course.

1 I'm sorry -- Federal has chosen to organize itself into a  
2 division. Very large, which division contracts with other  
3 insurance companies and contracts with vendors.  
4 These are not illusory contracts, they are not  
5 fraud, and is bound to them. The fact that the -- Federal  
6 is the employer doesn't change what the contract itself is.  
7 So as the manager and servicer, as we've seen, these many,  
8 many, hundred thousand -- I mean not a hundred thousand, I  
9 mean hundreds or a thousand employees that are organized  
10 around Chubb & Son, they provide these services to the  
11 other insurance companies without employees.  
12 That's the scope of this license agreement. Now,  
13 there's a, you know, one of the cases in New York is, says  
14 this: The unincorporated division or unincorporated  
15 entity, the nonlegal entity, is the contracting party. If  
16 that party breaches, the entity will be a defendant.  
17 But the plaintiff's remedy, the scope of the  
18 plaintiff's remedy is limited to the assets of the  
19 unincorporated thing that it contracted with. The two  
20 parties are indeed bound by the agreement that they made.  
21 So I think there's a bit of smoke in the sense  
22 that, there's a bit of smoke regarding Federal being  
23 responsible for Chubb & Son and the fact that they chose to  
24 enter into a contract with FICO in this way, and they are  
25 bound to it.



**1976****1978**

1 THE COURT: So let me put my concern a different  
2 way. FICO has never contended, at least as I understand it  
3 in this trial, that the use of Blaze Advisor by Federal  
4 employees breached the contract.

5 MR. HINDERAKER: No, we haven't, because --

6 THE COURT: How can they maintain that and yet  
7 say that the scope of the license is defined by Chubb &  
8 Son, a division of Federal, and the license can't be used  
9 by people other than the client's employees, then?

10 MR. HINDERAKER: In our law firm, we have a  
11 litigation department. The paycheck comes from Merchant &  
12 Gould. Everybody in the litigation department knows that  
13 we -- that that's the organization in which we are a part.  
14 When we sign license agreements for certain products that  
15 we decide in the litigation department, we are signing it  
16 as in the litigation department, not as Merchant & Gould.

17 It's a way that they chose to organize  
18 themselves, and we recognize that they are within, they are  
19 within Federal, and we recognize that they are within  
20 Federal. And we haven't said that a Federal employee can't  
21 use a software if that person is in the Chubb & Son  
22 division of, in the Chubb & Son division, that group.

23 Now, in the testimony of Mr. Taylor, you know, I  
24 said, are there any Federal employees outside of the  
25 United States? And he said no. And the reason I did that

1 Well, it's the management. That's why we put in the  
2 contracts of their management.

3 We'll think about it more along with you, but the  
4 notion that Chubb & Son enters into contracts and says it  
5 will do stuff, but then it's illusory because paychecks are  
6 coming from Federal doesn't make sense to me either.

7 THE COURT: Okay. Understood.

8 MR. HINDERAKER: And my only other comment as you  
9 want to think about this and you are looking at it, that  
10 first sentence of 9.2c does not require materiality. The  
11 first sentence speaks to breach of the license restriction.

12 We'll put the law in the memorandum that parties  
13 are quite free to contract around the common law rule of  
14 materiality. And in that first sentence we did. Yeah, the  
15 stuff we can address in the briefs.

16 THE COURT: Okay. So let's talk about timing of  
17 that.

18 When can you -- can you be fully briefed by  
19 Sunday at 6:00 p.m. or -- or tell me. And the difference  
20 being from my perspective, are we going to argue this  
21 Monday night? Are we going to argue it Tuesday before  
22 whatever charging conference is done?

23 MR. HINDERAKER: Well, I'd like to have until,  
24 I'd like to have as much time as we can, given the timing  
25 to us in terms of doing it.

**1977****1979**

1 is because obviously that means there's no, there's no  
2 Chubb & Son division people outside the United States  
3 either.

4 So that's why the use by the foreign affiliates  
5 is outside of the scope of the license, because those are  
6 not Chubb & Son employees.

7 I might say that the notion that was, that we  
8 just heard, that FICO has at some point said, has at any  
9 point said the foreign insurance companies are not  
10 affiliates is not right. We've always said that they were  
11 affiliates. They're just not -- just that the client  
12 doesn't have affiliates.

13 Does that make that the client and its affiliates  
14 inoperable? Yes, it does. Does it make Amendment Two  
15 meaningless? No, it doesn't because Chubb & Son that was  
16 providing all of the services for the dozen other insurance  
17 companies to use Blaze Advisor for selling insurance now  
18 could use it not just for the specialty insurance, but they  
19 could use it for commercial insurance, or if any of the  
20 companies that they managed wanted to sell personal  
21 insurance, the scope of the applications of the product  
22 types, the insurance types, was no longer limited.

23 So that's the expansion of scope to the  
24 enterprise of what Chubb & Son does. That's why we spent  
25 so much time just identifying, well, what is Chubb & Son?

1 THE COURT: Okay.

2 MR. HINDERAKER: So deeper into Sunday would be  
3 nice.

4 THE COURT: Okay. Well, that's fine.

5 Then why don't you file by midnight -- I can  
6 never remember. If midnight is Monday morning, then, then.  
7 If midnight is Sunday night, then, then. But midnight, the  
8 hour between very late Sunday night and Monday morning.

9 And we'll plan on arguing then at the end of the  
10 day on Monday.

11 And, certainly, if I don't rule on Monday, I will  
12 rule Tuesday morning before we start taking testimony.  
13 Okay?

14 MR. HINDERAKER: Would it be -- not if it's  
15 improper, but we've been fairly openly with the sequence of  
16 our witnesses. I hear there's five more. I hear there's  
17 five more witnesses. Could you disclose who they are?

18 MS. GODESKY: We will be presenting, after the  
19 next three tomorrow, Ms. Theberge, Mr. Schraer, Mr. Folz.  
20 We have the Clark video. And that's what we're certain  
21 about right now. So we can, we can get back to you with  
22 more detail this weekend.

23 MR. HINDERAKER: Thank you.

24 MS. GODESKY: Mm-hmm.

25 THE COURT: Okay. Anything else we should be

**2113****2115**

1 So I'm going to stick to what I said before,  
 2 2019, '20 and '21 come off of slide 10 and slide 17.  
 3 I will note obviously -- I'm not saying that it's  
 4 improper argument to make that point in final argument.  
 5 And as I've already stated, it's proper to ask Mr. Bakewell  
 6 to the effect of whether -- that he's aware of anything  
 7 that makes the analysis as to 2016, '17 and '18 unique to  
 8 those years. But beyond that, that's the line I'm drawing.  
 9 Welcome, Mr. Fleming. I just got done explaining  
 10 what I ruled, so I'm actually not going to repeat myself.  
 11 MR. FLEMING: Okay.  
 12 MS. GODESKY: May I ask one clarifying question?  
 13 THE COURT: You may.  
 14 MS. GODESKY: May we just remove those bars, as  
 15 opposed to redacting with a black box?  
 16 THE COURT: Of course.  
 17 MS. GODESKY: Thank you.  
 18 THE COURT: Okay. Let's bring in the jury.  
 19 1:08 p.m.  
 20 IN OPEN COURT  
 21 (JURY PRESENT)  
 22 THE COURT: Be seated, everyone.  
 23 Go ahead, Ms. Janus.  
 24 MS. JANUS: Thank you, Your Honor.  
 25

1 A. Yes, they are. I think that was a Duff & Phelps set of  
 2 numbers that were created for the whole application, not  
 3 for just Blaze.  
 4 Q. And would you say that the testimony that Mr. Whitener  
 5 provided about those applications, similar to CSI Express,  
 6 conflated the application itself, the functionality of the  
 7 application, with Blaze?  
 8 A. Yeah. Blaze is a rules management system and rules  
 9 service, and he was presenting it as if it was the policy  
 10 administration rate, quote, bind and issue kind of  
 11 capability, and it's not.  
 12 So, yeah, absolutely.  
 13 Q. And that would be the same for each of those  
 14 applications he went through?  
 15 A. For each of them, yeah.  
 16 MS. JANUS: Those are all the questions I have  
 17 for you, Mr. McCarter. Thank you.  
 18 THE WITNESS: Thank you.  
 19 THE COURT: Thank you, Ms. Janus.  
 20 Mr. Hinderaker.  
 21 MR. HINDERAKER: Yes, Your Honor. Thank you.  
 22 CROSS-EXAMINATION  
 23 BY MR. HINDERAKER:  
 24 Q. Well, good afternoon.  
 25 A. Good afternoon.

**2114****2116**

1 BY MS. JANUS:  
 2 Q. Mr. McCarter, when we broke for lunch, we were talking  
 3 about some of Mr. Whitener's demonstrative. Do you  
 4 remember that?  
 5 A. Yes.  
 6 Q. We talked about the bullet point slide demonstrative  
 7 about CSI Express.  
 8 A. Yes.  
 9 Q. And you in part talked about how the demonstrative and  
 10 Mr. Whitener's testimony conflated the value of this  
 11 application with the usefulness of Blaze, right?  
 12 A. Correct.  
 13 Q. During the course of Mr. Whitener's testimony, we were  
 14 shown bullet point slides like that for all of the  
 15 applications that, that Mr. Whitener testified about,  
 16 correct?  
 17 A. Correct.  
 18 Q. And that was Automated Renewal Processing,  
 19 Profitability Indicator, DecisionPoint, Evolution Canada,  
 20 Evolution Australia --  
 21 A. Yeah.  
 22 Q. -- EZER, Adapt, Europe and Australia, and Cornerstone.  
 23 Generally, would your opinion -- is your opinion  
 24 the same with respect to Mr. Whitener's testimony about  
 25 those applications and the demonstratives that he used?

1 Q. We haven't met except to open the doorway for each  
 2 other back and forth the last eight, nine days. My name is  
 3 Al Hinderaker. I'm one of the lawyers representing FICO.  
 4 I know you know that part.  
 5 A. Yes.  
 6 Q. What I would like to do at the outset is to, what I'll  
 7 call, maybe just set the point of view for you at which  
 8 FICO and I am coming at the subject matter of your  
 9 testimony.  
 10 A. Okay.  
 11 Q. So just to be clear, we are not - FICO's claims are  
 12 not, you know directed at the \$35 billion of annual revenue  
 13 of Chubb Limited year after year. It's not directed to the  
 14 whole group of insurance companies.  
 15 Understood?  
 16 A. Yes.  
 17 Q. And indeed, FICO's claims are not directed simply at  
 18 the applications. FICO's claims are directed at the  
 19 approximately \$5 billion a year of insurance that was sold  
 20 that ran through the applications and used Blaze Advisor.  
 21 So you can have that point of view in mind.  
 22 Also, this lawsuit is not about those insurance  
 23 policies that did not touch Blaze Advisor as going through  
 24 an application.  
 25 So I would like to also acknowledge this, but

**2117****2119**

1 also get your point of view on it. The jury will decide  
 2 what Mr. Whitener said in terms of the policy  
 3 administration system as being an application with many  
 4 components. I didn't hear him say the same thing you did,  
 5 but that's not my job, either. That's the jury job.  
 6 MS. JANUS: Your Honor, objection.  
 7 THE COURT: Sustained.  
 8 BY MR. HINDERAKER:  
 9 Q. Do we -- we do agree that like CSI Express is a policy  
 10 administration system that has many components.  
 11 A. Yes.  
 12 Q. And all of the components are, call it developed. The  
 13 application is developed with all of those components, with  
 14 all of those components interacting in a particular way so  
 15 as to achieve the desired business outcome of the  
 16 application.  
 17 A. Correct.  
 18 Q. Do we agree?  
 19 A. Yes.  
 20 Q. And each of those components in the application has its  
 21 own purpose. Do we agree?  
 22 A. Yes.  
 23 Q. And do we agree that when Blaze Advisor is one of the  
 24 components, the purpose of the Blaze Advisor component is  
 25 to decision, automate the decisioning.

1 Q. The application still meet the business objective for  
 2 original development?  
 3 A. Absolutely could. It depends on what's, what component  
 4 is not there.  
 5 Q. Okay. Fair enough.  
 6 And with respect to the Blaze Advisor -- the  
 7 applications that use Blaze Advisor, certainly a different  
 8 rules engine or different business management rules system  
 9 could be used in those applications, rather than Blaze  
 10 Advisor?  
 11 A. Yes.  
 12 Q. Yes. But in this lawsuit during the period of time of  
 13 our interest, you understand that the defendants chose to  
 14 use Blaze Advisor in those applications.  
 15 A. Yes.  
 16 Q. If I could see, if I could see Exhibit P15, please.  
 17 That says 0015. I'm interested in P518.  
 18 MS. JANUS: Mr. Hinderaker -- okay.  
 19 MR. HINDERAKER: It's not in that book.  
 20 MS. JANUS: Okay.  
 21 MR. HINDERAKER: Yeah. Didn't think about it  
 22 until having my salad at lunch.  
 23 MS. JANUS: Okay.  
 24 BY MR. HINDERAKER:  
 25 Q. This is in evidence. You were here in the courtroom

**2118****2120**

1 A. It's not automating a decision. It's rendering a  
 2 decision that Chubb automated.  
 3 Q. It's rendering a decision based upon the rules and  
 4 business logic that is written into the -- written into the  
 5 software, and as a consequence of firing up those rules,  
 6 the application renders a decision.  
 7 A. It renders Chubb's decision, yes.  
 8 Q. Yes, of course it would render Chubb's decision. Blaze  
 9 Advisor is agnostic to the industry, is it not?  
 10 A. That's correct.  
 11 Q. So if Blaze Advisor is going to be used at Chubb, the  
 12 whole purpose of it is to render Chubb-desired decisions.  
 13 We agree?  
 14 A. Yes.  
 15 Q. And do we also agree that if any one component or any  
 16 one meaningful component, I suppose -- well are there any  
 17 components in the application that are not meaningful to  
 18 the end goal of the business function?  
 19 A. I guess that could be in the eye of the beholder.  
 20 Q. All right. Maybe I should use a different word than  
 21 "meaningful." If any one of the components in an  
 22 application is removed and not substituted with an  
 23 equivalent, is the application at that point, I'll call,  
 24 broken?  
 25 A. No.

1 when it was introduced into evidence, were you?  
 2 A. I believe I was, yes.  
 3 Q. Yes. And I want to just point out to you that this is  
 4 an exhibit from the defendants, and for the various  
 5 applications that are reported on the exhibit, it  
 6 identifies the Blaze rules capability that was implemented  
 7 for each of those specific applications.  
 8 Do we agree?  
 9 A. Yes.  
 10 Q. Okay. Thank you.  
 11 I would now like to, I would now like to go to  
 12 Exhibit J001 -- I'm sorry -- J002, which is also not in the  
 13 book.  
 14 And I think you've reviewed the request for  
 15 information that Chubb & Son September to FICO.  
 16 A. Yes, I did.  
 17 Q. Yes. And if we could go to page 6, if I recall right.  
 18 And can we focus in on that section called Current CSI, IT  
 19 Environment.  
 20 And do you see from this exhibit that the Duck  
 21 Creek software was in the business tier and in the systems  
 22 of Chubb & Son at the time they sent the RFI?  
 23 A. Yes.  
 24 Q. Okay. So it's fair to conclude that having Duck Creek  
 25 in their system, Chubb & Son was interested in also

**2121****2123**

1 licensing Blaze Advisor.  
 2 A. Yes.  
 3 Q. I know you said that Duck Creek is more specialized to  
 4 the insurance industry. And does Duck Creek itself execute  
 5 rules?  
 6 A. It does.  
 7 Q. Thank you.  
 8 In your work -- that's good for that. Thank you.  
 9 In your work in forming your opinions, did you  
 10 review any of the statements of work regarding the  
 11 professional services that FICO personnel provided to  
 12 Chubb & Son in the years of Chubb & Son's use of Blaze  
 13 Advisor?  
 14 A. I do remember seeing something on a statement of work  
 15 for assistance of training or, you know, that type of  
 16 activity. I also saw a summary of the statement of work  
 17 totals, you know, of what they've used.  
 18 Q. Was that a document that was generated for the  
 19 litigation, the summary document?  
 20 A. Yeah, it was.  
 21 Q. Yeah. We saw that, yeah.  
 22 Did you do any, I'll call it, analysis, any  
 23 serious review of the statements of work before forming  
 24 your opinions here?  
 25 A. I asked Henry Mirolyuz and probably Ramesh in the

1 Q. Yes.  
 2 You mentioned how, you mentioned how customers  
 3 really don't know what the technology is behind some of  
 4 their experiences with insurance companies. Do you recall  
 5 that?  
 6 A. Yes.  
 7 Q. I have to confess I haven't. My daughter has. Have  
 8 you ever used GEICO to buy car insurance online?  
 9 A. Yeah, it's my auto insurer.  
 10 Q. All right. And maybe you do, but do you think the  
 11 normal customer knows what the technology is behind GEICO's  
 12 ability to sell an insurance online without talking to a  
 13 human being?  
 14 A. For personal auto, it's different than commercial auto,  
 15 but yes.  
 16 Q. Do you think the customer knows there's technology --  
 17 knows what the technology is?  
 18 A. No. I'm sorry. They don't know what the technology  
 19 is.  
 20 Q. But they do enjoy the experience, and they buy from  
 21 GEICO because of that?  
 22 A. Sure.  
 23 Q. Sure.  
 24 A. I don't buy because they got a great website, though.  
 25 I bought because they had a great price.

**2122****2124**

1 conversation of who was loading the rules and doing the  
 2 rules development and all that. And they said that FICO  
 3 was training Chubb to do that work. So Chubb would have  
 4 been the one loading the rules.  
 5 Q. Right. So you were at least generally aware that --  
 6 A. Yeah.  
 7 Q. -- that Chubb & Son purchased, I mean the statements of  
 8 work, professional services aren't free -- Chubb & Son  
 9 purchased professional services so that there could be a  
 10 knowledge transfer, if you will, from FICO to Chubb & Son  
 11 in terms of the use of Blaze Advisor.  
 12 A. Yeah, how to use the tool. Not what rules would come  
 13 over from Blaze.  
 14 Q. No quarrel about that, sir. I'm never going to contend  
 15 otherwise in the questioning.  
 16 A. Yeah.  
 17 Q. I know that is something you want to -- I agree with  
 18 you.  
 19 A. Okay.  
 20 Q. I agree with you that -- and isn't it true that Chubb &  
 21 Son went to FICO to license Blaze Advisor. Chubb & Son  
 22 licensed Blaze Advisor, and Chubb & Son licensed Blaze  
 23 Advisor so it could use that tool into which it would load  
 24 its business logic?  
 25 A. Yes.

1 Q. And you chose to buy it online and do it that way.  
 2 A. That's the way GEICO sold their policies.  
 3 Q. That's exactly so.  
 4 I want to actually come back to this and not do  
 5 it now.  
 6 So let me, let me turn to this. I'm having --  
 7 tried to focus the discussion on FICO's claims as being  
 8 those that are relevant to --  
 9 MS. JANUS: Objection, Your Honor.  
 10 THE COURT: Well --  
 11 MR. HINDERAKER: I just want to change topics.  
 12 That's all.  
 13 THE COURT: Yep.  
 14 BY MR. HINDERAKER:  
 15 Q. So I'm going to change topics a little bit and go to  
 16 the topic of your years of experience with technology in  
 17 the insurance space.  
 18 A. Okay.  
 19 Q. All right. So this is more general --  
 20 A. Okay.  
 21 Q. -- discussion.  
 22 Do you agree that all of the resources, that all  
 23 of the resources of an insurance company are focussed on  
 24 trying to sell more policies and reduce the amount of  
 25 losses?

**2137****2139**

1 can be added fairly quickly, two weeks. Can be leveraged  
 2 across projects.  
 3 That's what's said in this document.  
 4 A. Yeah, the model that Chubb built.  
 5 Q. Agreed. The model that Chubb built inside of Blaze  
 6 Advisor that it licensed from FICO.  
 7 A. Agreed.  
 8 Q. Agreed.  
 9 Let's go to Exhibit 518 again, Plaintiff's 518.  
 10 And if we could just, if we can increase that column which  
 11 is Business Rules Capability.  
 12 So according to Chubb & Son, the Blaze rules  
 13 capability for DecisionPoint was rate tables and pricing  
 14 calculations, eligibility determinations, endorsement  
 15 generation, and data normalization.  
 16 Agreed?  
 17 A. That's what it says, yes.  
 18 Q. And off the top of my, top of the screen, I am not  
 19 seeing Profitability Indicator detailed out on this one, so  
 20 we'll move on.  
 21 We can take that down and let me change slides.  
 22 Do we agree that policy administration systems  
 23 are core systems of an insurance company?  
 24 A. They are.  
 25 Q. And do we agree that the meaning of a core system is a

1 system.  
 2 Q. It executed against those rules.  
 3 A. It did.  
 4 Q. Yes. I think we're trying to say the same thing.  
 5 A. No, we're not.  
 6 Q. Well, we'll see.  
 7 A. Okay.  
 8 Q. The underwriting rules for acceptance or rejection of a  
 9 risk come from Chubb.  
 10 A. Correct.  
 11 Q. It is the company that's deciding what its own business  
 12 logic is. And that is written into Blaze Advisor for CSI  
 13 Express.  
 14 A. Yes.  
 15 Q. Agree with me so far?  
 16 A. Yes.  
 17 Q. And when an insurance application is received, CSI  
 18 Express, using Blaze Advisor, compares the risk to the  
 19 rules of Chubb and executes a decision accordingly.  
 20 Agreed?  
 21 A. I agree with what you are saying.  
 22 Q. Thank you.  
 23 And indeed when a policy is accepted in CSI  
 24 Express, there are a lot of business rules that are fired  
 25 or retrieved in the process to bind and book the policy to

**2138****2140**

1 system that's a primary one that supports the insurance  
 2 operations?  
 3 A. It supports the insurance operation, yes.  
 4 Q. Okay. And you understood in your review that Blaze  
 5 Advisor in CSI Express, as one of the policy administration  
 6 systems, supported the underlying process for CSI Express?  
 7 A. I don't understand your question.  
 8 Q. Blaze Advisor supports the -- Blaze Advisor supports  
 9 the underlying process of CSI Express. Yes or no?  
 10 A. What underlying process? I don't --  
 11 Q. Oh, I understand the confusion. The process of being a  
 12 business administration system.  
 13 A. It does not do business administration or policy  
 14 administration. Blaze does not.  
 15 Q. Understood. Let me go back to 518. I can get a better  
 16 question.  
 17 If we look at 518 and look at CSI Express, Blaze  
 18 Advisor supported the underwriting guidance in the CSI  
 19 Express policy administration system application.  
 20 A. It provided Chubb's rules for underwriting guidance,  
 21 yes.  
 22 Q. Agreed. It provided the rules that came from Chubb  
 23 that it chose to put into Blaze Advisor.  
 24 A. Yeah, just to be clear. It didn't do the guidance. It  
 25 provided the guidance rules that Chubb had loaded into the

1 decide whether it should be, whether to decide whether to  
 2 renew, and the various functions of the policy  
 3 administration system, because you said all those things.  
 4 A. All those functionalities were built by Chubb to call  
 5 out to various rules engines, Duck Creek, Blaze, and  
 6 homegrown rules.  
 7 Q. Yes. And Blaze was one of the components that was  
 8 executing rules that were put into its software in  
 9 accordance with the business logic of Chubb & Son.  
 10 A. Yes.  
 11 Q. In your -- you did some looking at what CUW was.  
 12 A. Yes.  
 13 Q. In your view, CUW was also a core system?  
 14 A. It was part of the CSI Express is the way it was  
 15 initially presented to me.  
 16 Q. Okay.  
 17 A. And so, yes, it was part of that core policy  
 18 administration system.  
 19 Q. And we can be -- we can agree, I think, that while it's  
 20 called out as a separate application, CUW-IM, there is an  
 21 interfunctionality, if I can use that word, with CUW and  
 22 CSI Express.  
 23 A. The two are integrated.  
 24 Q. Better word. The two are integrated. We will use  
 25 that.

**2141****2143**

1 A. Yeah.

2 Q. And CIS Claims is another core system and one of the --

3 agreed?

4 A. CIS Claims, as I understand it, is really mislabeled.

5 It's not a claims system.

6 Q. Yes. You've heard the testimony that it's a, feeds

7 into the actuarial process.

8 A. It's basically a function of the policy administration

9 system to feed data into a repository for claims for

10 analysis.

11 Q. I think we both heard the same testimony in that

12 regard.

13 A. Okay.

14 Q. I understand the confusion given its title.

15 A. So I wouldn't call that a core system, no. It's a

16 business intelligence capability.

17 Q. Okay.

18 A. I mean, it provides data to the actuary to --

19 Q. Well, if we go back to your deposition then. I guess

20 I'm confused. If you go to line 11, please, or page 11.

21 A. Of the deposition?

22 Q. Yes, please. And I'm going to start on line 14, when

23 you get a chance to get there.

24 A. Line?

25 Q. 14?

1 A. Okay.

2 Q. I'm not contending otherwise.

3 A. Okay.

4 Q. Yeah. If we were to speak to the Blaze Advisor role in

5 DecisionPoint, you would agree that Blaze Advisor can serve

6 up a rule quickly?

7 A. Some rules, yes.

8 Q. I'm speaking, yeah, I'm speaking of the rules in

9 DecisionPoint at this point.

10 A. DecisionPoint, there's multiple parts of DecisionPoint,

11 right?

12 Q. So do we agree -- well, let's put up the 518 again

13 then.

14 So do we agree that for DecisionPoint the Blaze

15 Advisor capability includes rate tables and pricing

16 calculations, eligibility determination, endorsement

17 generation and data normalization?

18 A. Yes.

19 Q. Okay. We can put that down.

20 Let's turn to automated renewal.

21 Do we agree that for insurance companies

22 retaining their customers is important?

23 A. Absolutely.

24 Q. And so we agree that the more customers that renew

25 their policies, the better.

**2142****2144**

1 A. 14.

2 Q. The question -- are you there with me now?

3 A. Yep.

4 Q. Okay. The question says, "What does the word 'core'

5 mean?

6 "Answer: It's the primary system that supports

7 the insurance operations.

8 "Question: In the case of Federal can you give

9 me an example of that? What would be a core system?

10 "Answer: Sure. CSI suppress would be one.

11 "Question: Any others come to mind?

12 "Answer: CUW, TAPS, CIS Claims."

13 Did I read that right?

14 A. Yes. At the time of this deposition, I still

15 understood that to be the claims system.

16 Q. Okay. Your understanding changed.

17 A. It changed after that.

18 Q. All right. Good. So whether --

19 Let me put it this way. Rather than debate the

20 use of the word "core," CSI Express is a core system.

21 Agreed? Right? And we agree that CIS Claims, your word,

22 I'm going to use your word "integrated," integrates into

23 CSI Express.

24 A. Yes. But to be clear it's not the claims system.

25 Q. No. We -- yeah, absolutely.

1 A. Yes.

2 Q. Do we also agree that being able to renew policies

3 without human intervention or human touch results in more

4 renewals?

5 A. Not necessarily.

6 Q. Do you think there is a business benefit to automatic

7 renewals?

8 A. Yes.

9 Q. What is that business benefit?

10 A. Less touch by humans.

11 Q. And do you also agree -- well, do you agree that while

12 in any individual case it may or may not make a difference

13 that over the aggregate if you can automate renewals you

14 are going to increase the percentage of renewals overall?

15 A. I don't agree with that.

16 Q. Do you have any data that suggests otherwise?

17 A. I don't have the rules that were actually being used to

18 determine whether it was one that would, a customer would

19 actually renew. I mean, at the end of the day, renewals

20 aren't something that just automatically happens. The

21 customer has to say he wants to renew the policy.

22 Q. Well, I agree. Of course that's right.

23 A. So if they don't renew the policy, whether it made it

24 all the way through the process to the end and he didn't

25 renew or she didn't renew.



**2145****2147**

1 Q. I think your answer is highlighting the, an example of  
 2 an individual customer. Agreed?  
 3 A. Yeah.  
 4 Q. My question was directed to, let's call it a hundred  
 5 customers or a thousand customers. If you can  
 6 automatically issue renewal policies to a thousand existing  
 7 customers rather than do it individually, are you going to  
 8 increase your rate of renewals from your experience in the  
 9 industry?  
 10 A. Yes.  
 11 Q. Do we agree that -- let me turn to, we did some of the  
 12 applications. I want to sort of speak about Blaze Advisor  
 13 more generally now and some of the business benefits from  
 14 Blaze Advisor.  
 15 Do we agree that Blaze Advisor was implemented  
 16 into applications to enhance precision, agility, quality  
 17 and all the efficiencies that you get out of externalizing  
 18 rules and managing rules?  
 19 A. That's the stated benefits from FICO's document, yes.  
 20 Q. And do you think that Blaze Advisor does not produce or  
 21 achieve those benefits?  
 22 A. I don't, I don't have the evidence for what they used  
 23 it for. It wasn't clear to me that it had achieved those  
 24 benefits.  
 25 Q. So on page 91 --

1 justification for multiple instances of precision and  
 2 agility and quality and all of the efficiencies that you  
 3 get out of externalizing rules and managing rules and so  
 4 forth.  
 5 "Question: Precision, consistency, agility,  
 6 speed, time and costs?  
 7 "Answer: Yes."  
 8 A. Mm-hmm, correct.  
 9 Q. I read that correctly.  
 10 A. You did.  
 11 Q. And with respect to your analysis, do you agree that  
 12 Blaze Advisor can achieve those outcomes?  
 13 A. I don't know if it can or it can't, but that's the  
 14 stated goal of the technology.  
 15 Q. Good. Yes, I agree. And then let's go to page 92,  
 16 just up, starting at line 4:  
 17 "Question" -- are you with me now?  
 18 A. Yep:  
 19 Q. "Question: Generally speaking, they are efficiencies,  
 20 do you, do you dispute that Blaze Advisor can achieve those  
 21 five as you call them efficiencies?  
 22 "Answer: No, I don't dispute that."  
 23 Agreed?  
 24 A. Yes.  
 25 Q. Changing topics a little bit. Do we agree that if you

**2146****2148**

1 A. Of?  
 2 Q. Your deposition, please.  
 3 A. Okay.  
 4 Q. And I'm starting at line 3.  
 5 A. On 91?  
 6 Q. No. No. 91.  
 7 A. 90. Mr. Folz? Is that the line?  
 8 Q. No. The -- at your deposition, page 91.  
 9 A. Oh, 91.  
 10 Q. Yeah, nine one.  
 11 A. You said 90.  
 12 Q. 91.  
 13 A. And after -- does it start with, "And after that"?  
 14 Q. Yeah. And then, so question -- yes, it does.  
 15 "And after that 2006 initial engagement, Federal?  
 16 Then expanded their use of Blaze into other applications;  
 17 isn't that right?  
 18 "Answer: That's correct."  
 19 A. "That's correct."  
 20 Q. "Question: And did you speak with any other  
 21 individuals or review any other documents about the  
 22 business justifications for implementation in Blaze into  
 23 those other applications?  
 24 "Answer: There were a number of documents I  
 25 recall reviewing that basically repeated the same

1 have the organization's top expert develop the rules that  
 2 are then loaded into, put into Blaze Advisor, used to drive  
 3 decisions, you will get better risk decisions and -- well,  
 4 you will get better decisions overall?  
 5 A. Not necessarily.  
 6 Q. If you have the top expert developing the rules that  
 7 then drive the decisions, you don't think you will get  
 8 better decisions?  
 9 A. The application, as I understand it, allow the under  
 10 writer to override what the system will say. So wouldn't  
 11 necessarily get the result that Chubb was looking for, but  
 12 got a different result that may still be okay.  
 13 Q. Okay. But it would be the consequence of another  
 14 underwriter overriding?  
 15 A. Overriding what the system was saying you should think  
 16 about doing it this way. It's guidance. It's  
 17 underwriting -- that's why they call it underwriting  
 18 guidance, not underwriting absolutes.  
 19 Q. All right. So the system and the guidance would be  
 20 able to produce a better decision, but an individual human  
 21 underwriter could override that and change the results?  
 22 A. You don't know if it was that that underwriter knew  
 23 something better than the one that wrote the rule about  
 24 that particular rule. So they could have put a different  
 25 rule in that said do it this way and found out they had